

Fitness Industry Award 2010

This Fair Work Commission consolidated modern award incorporates all amendments up to and including 26 October 2018 ([PR610128](#), [PR610260](#))

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

- 7—Individual flexibility arrangements
- 8—Consultation about major workplace change
- 8A—Consultation about changes to rosters or hours of work
- 9—Dispute resolution
- 14—Termination of employment
- 22—Payment of wages

Current review matter(s): [AM2014/47](#); [AM2014/190](#); [AM2014/196](#); [AM2014/197](#); [AM2014/227](#); [AM2014/300](#); [AM2014/301](#); [AM2015/1](#); [AM2015/2](#); [AM2016/15](#); [AM2016/17](#); [AM2016/8](#)

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[Varied by [PR532630](#), [PR544519](#), [PR546288](#), [PR557581](#), [PR573679](#), [PR583004](#), [PR584102](#), [PR609423](#), [PR610260](#)]

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Part 1—Application and Operation

1. Title

This award is the *Fitness Industry Award 2010*.

2. Commencement and transitional

[Varied by [PR542214](#)]

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 [PR542214](#) 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 [PR542214](#) 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 [PR542214](#) ppc 04Dec13]

2.6 The Fair Work Commission may review the transitional arrangements:

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

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

3. Definitions and interpretation

[Varied by [PR997772](#), [PR503723](#), [PR515150](#), [PR531302](#), [PR546080](#)]

3.1 In this award, unless the contrary intention appears:

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

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

[Definition of **all-up casual loading** inserted by [PR531302](#) from 16Nov12]

all-up casual loading means the all up casual loading payable to casual employees under the terms of the Notional Agreement Preserving the *Health, Fitness and Indoor Sports Centres (State) Award (NSW)*

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

[Definition of **default fund employee** inserted by [PR546080](#) 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 [PR546080](#) 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 [PR503723](#) 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 [PR503723](#) ppc 01Jan11]

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

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

employee means national system employee within the meaning of the Act

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

employer means national system employer within the meaning of the Act

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

[Definition of **exempt public sector superannuation scheme** inserted by [PR546080](#) ppc 01Jan14]

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

fitness industry means the operation or provision of:

- (a) fitness centres;
- (b) fitness services or classes;
- (c) group fitness organisations;
- (d) weight loss/control centres;
- (e) aquatic centres;
- (f) aquatic services or classes;
- (g) indoor sports centres;
- (h) golf driving ranges;
- (i) dance centres;
- (j) martial arts centres; and
- (k) recreational camps.

[Definition of **MySuper product** inserted by [PR546080](#) ppc 01Jan14]

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

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

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

[Definition of **pool** inserted by [PR515150](#) ppc 29Sep11]

pool in the context of this award applies to a swimming pool

standard rate means the minimum weekly wage for a Level 3 in clause 17—Minimum wages

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 [PR515150](#), [PR515378](#)]

4.1 This industry award covers employers throughout Australia engaged in the fitness industry and their employees in the classifications in this award to the exclusion of any other modern award.

4.2 This award does not cover employers or employees covered by the following awards:

- (a) the *Amusement, Events and Recreation Award 2010*;
- (b) the *Children's Services Award 2010*;
- (c) the *Cleaning Services Award 2010*;
- (d) the *Hospitality Industry (General) Award 2010*;

[New 4.2(e) inserted by [PR515150](#) ppc 29Sep11; corrected by [PR515378](#) ppc 29Sep11]

- (e) the *Local Government Industry Award 2010*;

[4.2(e) renumbered as 4.2(f) by [PR515150](#) ppc 29Sep11; corrected by [PR515378](#) ppc 29Sep11]

- (f) the *Registered and Licensed Clubs Award 2010*; or

[4.2(f) renumbered as 4.2(g) by [PR515150](#) ppc 29Sep11; corrected by [PR515378](#) ppc 29Sep11]

- (g) the *Security Services Industry Award 2010*.

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

4.4 This award does not cover an employee who is employed by the employer to provide administrative and other operational support outside of a fitness centre.

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.

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.

- 4.9** 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 normally 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. Individual flexibility arrangements

[Varied by [PR542214](#); 7—Award flexibility renamed and substituted by [PR610260](#) 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 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 [PR610260](#) 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 [PR610260](#) 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 [PR542214](#); substituted by [PR610260](#) ppc 01Nov18]

- 9.1** Clause 9 sets out the procedures to be followed if a dispute arises about a matter under this award or in relation to the [NES](#).

- 9.2** The parties to the dispute must first try to resolve the dispute at the workplace through discussion between the employee or employees concerned and the relevant supervisor.
- 9.3** If the dispute is not resolved through discussion as mentioned in clause 9.2, the parties to the dispute must then try to resolve it in a timely manner at the workplace through discussion between the employee or employees concerned and more senior levels of management, as appropriate.
- 9.4** If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses 9.2 and 9.3, a party to the dispute may refer it to the Fair Work Commission.
- 9.5** The parties may agree on the process to be followed by the Fair Work Commission in dealing with the dispute, including mediation, conciliation and consent arbitration.
- 9.6** If the dispute remains unresolved, the Fair Work Commission may use any method of dispute resolution that it is permitted by the [Act](#) to use and that it considers appropriate for resolving the dispute.
- 9.7** A party to the dispute may appoint a person, organisation or association to support and/or represent them in any discussion or process under clause 9.
- 9.8** While procedures are being followed under clause 9 in relation to a dispute:
- (a) work must continue in accordance with this award and the [Act](#); and
 - (b) an employee must not unreasonably fail to comply with any direction given by the employer about performing work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.
- 9.9** Clause 9.8 is subject to any applicable work health and safety legislation.

Part 3—Types of Employment and Termination of Employment

10. Types of employment

- 10.1** An employee may be employed in one of the following categories:
- (a) full-time;
 - (b) part-time; or
 - (c) casual.

11. Full-time employment

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

12. Part-time employment

12.1 A part-time employee is an employee who:

- (a) works less than the full-time hours of 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 who do the same kind of work.

12.2 At the time of engagement the employer and the part-time employee will agree in writing on a regular pattern of work, specifying at least the hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day.

12.3 Any agreed variation to the hours of work will be recorded in writing.

12.4 An employer is required to roster a part-time employee for a minimum of three consecutive hours on a shift or a minimum of three hours, exclusive of meal breaks, on a broken shift.

12.5 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.

12.6 All time worked in excess of the hours as agreed under clause 12.2 or varied under clause 12.3 will be overtime and paid for at the rates prescribed in clause 26—Overtime and penalty rates.

12.7 A part-time employee employed under the provisions of this clause must be paid for ordinary hours worked at the rate of 1/38th of the weekly rate prescribed in clause 17—Minimum wages for the work performed.

13. Casual employment

[Varied by [PR531302](#), [PR700564](#)]

13.1 A casual employee is an employee engaged and paid as such.

13.2 A casual employee for working ordinary hours on Monday to Friday must be paid per hour at the rate of 1/38th of the minimum weekly rate prescribed in clause 17—Minimum wages for the work being performed plus a casual loading of 25%.

13.3 A casual employee for working ordinary hours on a Saturday, Sunday or public holiday must be paid per hour at the rate of 1/38th of the minimum weekly rate prescribed in clause 17—Minimum wages for the work being performed plus a casual loading of 30%.

13.4 Subject to clauses 13.5 and 26.3(c), a casual employee must be engaged for a minimum period of three hours' work at the appropriate rate or be paid per engagement for a minimum of three hours at the appropriate rate.

[13.5 varied by [PR531302](#) from 16Nov12]

- 13.5** Notwithstanding clause 13.4 and subject to clause 26.3(c), a casual employee who is classified as a Level 2, 3, 3A, 4 or 4A instructor or trainer or as a student undertaking practical work involvement may be engaged for a minimum period of one hour's work at the appropriate rate or be paid per engagement for a minimum of one hour's work at the appropriate rate.

13.6 Right to request casual conversion

[13.6 inserted by [PR700564](#) ppc 01Oct18]

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

- (iv) it is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the employee's hours of work are required to be performed in the next 12 months which cannot be accommodated within the days and/or hours during which the employee is available to work.
- (h) For any ground of refusal to be reasonable, it must be based on facts which are known or reasonably foreseeable.
- (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 8.1. 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 [PR610260](#) 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 Employee's period of continuous service with the employer at the end of the day the notice is given	Column 2 Period of notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

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

- (c) In 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 [PR503723](#); [PR561478](#)]

- 15.1** Redundancy pay is provided for in the NES.

15.2 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.

15.3 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.

15.4 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 14.3.

15.5 Transitional provisions – NAPSA employees

[15.5 renamed by [PR503723](#); deleted by [PR561478](#) ppc 05Mar15]

15.6 Transitional provisions – Division 2B State employees

[15.6 inserted by [PR503723](#); deleted by [PR561478](#) ppc 05Mar15]

Part 4—Minimum Wages and Related Matters

16. Classifications

The classification structure and definitions for this award are set out in Schedule B—Classification Structure and Definitions. An employer must advise an employee in writing of their classification on commencement and of any changes to their classification.

17. Minimum wages

[Varied by [PR997968](#), [PR509125](#), [PR522956](#), [PR531302](#), [PR536759](#), [PR551682](#), [PR566773](#), [PR579880](#), [PR592195](#), [PR593869](#), [PR606420](#)]

17.1 Adults

[17.1 varied by [PR997968](#), [PR509125](#), [PR522956](#); substituted by [PR531302](#), [PR566773](#) ppc 01Jul15; varied by [PR579880](#), [PR592195](#), [PR606420](#) ppc 01Jul18]

The minimum wages for an adult employee are as follows:

Classification level	Minimum weekly wage	Minimum hourly wage
	\$	\$
Level 1	719.20	18.93
Level 2	739.90	19.47
Level 3	794.70	20.91
Level 3A	837.40	22.04
Level 4	871.80	22.94
Level 4A	913.70	24.04
Level 5	963.00	25.34
Level 6	954.70	25.12
Level 7	991.80	26.10

17.2 Juniors

The minimum wages for a junior employee are the following percentages of the adult minimum wage for the classification appropriate to the work performed:

Age	%
16 years of age and under	55
17 years of age	65
18 years of age	75
19 years of age	85
20 years of age	100

17.3 Supported wage system

See Schedule C—Supported Wage System.

17.4 National training wage

[17.4 substituted by [PR593869](#) ppc 01Jul17]

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

[17.4(b) varied by [PR606420](#) ppc 01Jul18]

- (b) This award incorporates the terms of Schedule E to the *Miscellaneous Award 2010* as at 1 July 2018. Provided that any reference to “this award” in Schedule E to the *Miscellaneous Award 2010* is to be read as referring to the *Fitness Industry Award 2010* and not the *Miscellaneous Award 2010*.

18. Allowances

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

[Varied by [PR998115](#), [PR509246](#), [PR523076](#), [PR531302](#), [PR536879](#), [PR551802](#), [PR566903](#), [PR579600](#), [PR592349](#), [PR606572](#)]

18.1 Leading hands and supervisors

[18.1 varied by [PR531302](#) from 16Nov12]

An employee at classification Level 4A or below in charge of the following number of employees must be paid:

Number of employees	Amount of the standard rate % per week extra
1 to 5	3.0
6 to 10	4.1
more than 10	5.5

18.2 Meal allowance

[18.2 varied by [PR998115](#), [PR509246](#), [PR523076](#), [PR536879](#), [PR551802](#), [PR566903](#), [PR579600](#), [PR592349](#), [PR606572](#) ppc 01Jul18]

An employee required to work overtime for more than one and a half hours immediately after their ordinary hours of work must be paid a meal allowance of \$11.61 unless the employer provides a meal.

18.3 Vehicle allowance

[18.3(a) varied by [PR523076](#), [PR536879](#), [PR551802](#) ppc 01Jul14]

- (a) An employee who, by agreement with their employer, uses their own motor vehicle in the performance of duties must be paid \$0.78 per kilometre travelled.

[18.3(b) varied by [PR551802](#) ppc 01Jul14]

- (b) An employee who, by agreement with their employer, uses their own motorcycle in the performance of duties must be paid \$0.26 per kilometre travelled.

18.4 Broken shift allowance

[18.4 varied by [PR998115](#), [PR523076](#), [PR536879](#), [PR551802](#), [PR606572](#) ppc 01Jul18]

An employee working a rostered broken shift must be paid per day 1.7% of the [standard rate](#) extra and for excess fares \$1.90 extra.

18.5 First aid allowance

An employee who is rostered by an employer to be on first aid duty at a particular time must be paid per day 0.32% of the [standard rate](#) extra.

18.6 Uniforms and protective clothing

An employee who is required to wear specific clothing as part of their employment must be reimbursed for the reasonable cost of purchasing such clothing and laundering or dry cleaning such clothing, unless such clothing is provided by the employer without cost to the employee or is cleaned by the employer. Where such clothing is provided by the employer it will remain the property of the employer.

18.7 Travelling time and fares

An employee who is required by the employer to travel from one place of work to another must be reimbursed by the employer all fares necessarily incurred by the employee. All time occupied in such travel is deemed to be working time and the employee must be paid at the appropriate rate.

18.8 Sleepover allowance

- (a) Sleepover means a continuous period of eight hours during which an employee is required to sleep at the workplace and be available to deal with any urgent situation which cannot be dealt with by another employee or be dealt with after the end of the sleepover period.
- (b) The employer must take all reasonable steps to enable the employee to sleep at the workplace including the provision of a bed with privacy. Access to a bathroom, toilet and a meal room must also be provided free of charge to the employee.
- (c) An employee will only sleep over if:
 - (i) there is agreement between the employee and the employer with at least one week's notice in advance, except in the case of an emergency; and
 - (ii) the sleepover consists of eight continuous hours.
- (d) The sleepover allowance is equivalent to three hours payment at the employee's ordinary rate of pay. Such payment is compensation for the

sleepover and for all necessary work of up to two hours duration during the sleepover period. Any necessary work in excess of two hours during the sleepover period must be compensated at overtime rates in addition to the sleepover allowance.

- (e) An employee on a sleepover must not be required to work more than eight hours before, and/or more than eight hours after, a sleepover, unless provision has been made at a workplace to work longer hours for the purpose of providing more continuous leisure time within the roster and this arrangement has the genuine agreement of the employees affected and does not adversely affect the health and safety of the employee(s) involved.

18.9 Adjustment of expense related allowances

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

Allowance	Applicable Consumer Price Index figure
Meal allowance	Take away and fast foods sub-group
Vehicle allowance	Private motoring sub-group
Fares allowance	Urban transport fares sub-group

19. District allowances

[19 deleted by [PR561478](#) ppc 05Mar15]

20. Accident pay

[Varied by [PR503723](#); deleted by [PR561478](#) ppc 05Mar15]

21. Higher duties

An employee appointed by the employer to perform the work of a classification higher than the employee's usual classification must be paid at least the rate applicable to the higher classification for the hours worked.

22. Payment of wages

[Varied by [PR610128](#)]

22.1 Frequency of payment

Wages must be paid weekly or fortnightly or, by agreement between the employer and the majority of employees, monthly.

22.2 Method of payment

Wages must be paid by cash, cheque or electronic funds transfer, as determined by the employer, into the bank or financial institution account nominated by the employee.

22.3 Day off coinciding with payday

Where an employee is paid wages by cash or cheque and the employee is, by virtue of the arrangement of their ordinary hours, to take a day off on a day which coincides with payday, such employee must be paid no later than the working day immediately following payday. However, if the employer is able to make suitable arrangements, wages may be paid on the working day preceding payday.

22.4 Absences from duty under an averaging system

Where an employee's ordinary hours in a week are greater or less than 38 hours and such employee's pay is averaged to avoid fluctuating wage payments, the following applies:

- (a) The employee accrues a credit for each day the employee works ordinary hours in excess of the daily average.
- (b) The employee incurs a debit for each day of absence from duty other than when the employee is on paid leave, workers compensation or jury service.
- (c) An employee absent for part of a day (other than when the employee is on paid leave, workers compensation or jury service) incurs a proportion of the debit for the day, based on the proportion of the working day that the employee was in attendance.

22.5 Payment on termination of employment

[22.5 inserted by [PR610128](#) 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. Superannuation

[Varied by [PR998455](#), [PR530226](#), [PR546080](#)]

23.1 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.

23.2 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.

23.3 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 23.2.

- (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 23.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 23.3(a) or (b) was made.

23.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 23.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 23.2 and pay the amount authorised under clauses 23.3(a) or (b) to one of the following superannuation funds or its successor:

- (a) AustralianSuper; or

[23.4(b) substituted by [PR530226](#) ppc 26Oct12]

- (b) CareSuper; or
- (c) First State Super; or
- (d) Nationwide Superannuation Fund; or
- (e) Sunsuper; or
- (f) Club Super; or
- (g) Intrust; or

[23.4(h) deleted by [PR546080](#) ppc 01Jan14]

[23.4(i) renumbered as 23.4(h) by [PR546080](#) ppc 01Jan14]

- (h) AMP Superannuation Savings Trust; or

[23.4(j) deleted by [PR546080](#) ppc 01Jan14]

[23.4(k) renumbered as 23.4(i) by [PR546080](#) ppc 01Jan14]

- (i) HESTA Super Fund; or

[23.4(l) renumbered as 23.4(j) by [PR546080](#) ppc 01Jan14]

- (j) Statewide Superannuation Trust; or

[23.4(m) deleted by [PR546080](#) ppc 01Jan14]

[23.4(n) renumbered as 23.4(k) by [PR546080](#) ppc 01Jan14]

- (k) Tasplan; or

[New 23.4(o) inserted by [PR998455](#) from 1Jan10; renumbered as 23.4(l) by [PR546080](#) ppc 01Jan14]

- (l) HOSTPLUS Superannuation Fund; or

[23.4(o) renumbered as 23.4(p) by [PR998455](#) from 1Jan10, renumbered as 23.4(m) and varied by [PR546080](#) ppc 01Jan14]

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

[New 23.4(n) inserted by [PR546080](#) ppc 01Jan14]

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

23.5 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 23.2 and pay the amount authorised under clauses 23.3(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 the statutory requirements; and
 - (ii) the employee remains employed by the employer.

Part 5—Hours of Work and Related Matters

24. Ordinary hours of work and rostering

24.1 The ordinary hours of work for a full-time employee must not exceed an average of 38 hours per week over a period of four weeks. Such hours may be worked over any five days of the week, between the hours of:

- (a) 5.00 am and 11.00 pm, Monday to Friday; and
- (b) 6.00 am and 9.00 pm, Saturday and Sunday.

24.2 The ordinary hours of work for a full-time or part-time employee must not exceed 10 hours on any one day.

24.3 An employee may be rostered to work a broken shift on any day provided that:

- (a) the shift is not broken into more than two parts;

- (b) the total length of the shift is not less than three hours, exclusive of meal breaks; and
- (c) the span of hours from the start of the first part of the shift to the end of the second part of the shift is not more than 12 hours.

24.4 An employee must be notified by their employer of their rostered hours. At least seven days' notice must be given by an employer to an employee of any change in their rostered hours, except in the case of an emergency.

24.5 Rostered days off (RDO)

- (a) The employer and the majority of employees at an enterprise may agree to establish a system of RDO.
- (b) The terms of any agreement to introduce a system of RDO must be set out in the time and wages records.
- (c) Following the introduction of a system of RDO:
 - (i) An employee may elect, with the consent of the employer, to take a rostered day off at any time.
 - (ii) An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.
 - (iii) An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn on by the employee at a time mutually agreed between the employer and the employee.
 - (iv) An employer must record RDO arrangements in the time and wages record.

24.6 Make-up time

An employee may elect, with the consent of the employer, to work make-up time under which the employee takes time off during ordinary hours and works those hours at a later time, during the spread of ordinary hours provided in this award. An employer must record make-up time arrangements in the time and wages record.

25. Breaks

25.1 Meal break

An employee must be given an unpaid meal break of not less than 30 minutes and not more than 60 minutes no later than five hours after commencing work and five hours after the resumption of work from a previous meal break. An employee required to work through a meal break must be paid double time for all time so worked until a meal break is allowed.

25.2 Rest break

An employee, other than a casual employee who works three hours or less per shift, must be allowed a paid 10 minute rest break between their time of commencing work and their meal break and a paid 10 minute rest break between their meal break and their time of ceasing work for the day.

26. Overtime and penalty rates

[Varied by [PR584102](#)]

26.1 Overtime rates

All time worked by an employee outside the spread of hours prescribed in clause 24.1, in excess of an average of 38 hours per week over a period of four weeks or in excess of 10 hours on any day is deemed to be overtime and must be paid at the rate of time and a half for the first two hours and double time thereafter from Monday to Saturday and at the rate of double time on a Sunday.

26.2 Break between shifts

An employee is entitled to a minimum 10 hour break between shifts. An employee required by the employer to resume work without having a break of at least 10 hours between rostered shifts must be paid at the rate of double time for all time worked until they have had a break from work of at least 10 hours.

26.3 Payment for working Saturdays, Sundays and public holidays

- (a) Subject to clause 13.3, an employee must be paid at the rate of time and a quarter for all ordinary hours worked on a Saturday.
- (b) Subject to clause 13.3, an employee must be paid at the rate of time and a half for all ordinary hours worked on a Sunday.
- (c) Subject to clause 13.3, an employee must be paid at the rate of double time and a half for all hours worked on a public holiday. An employee required to work on a public holiday must be engaged or be paid for at least four hours work at the rate of double time and a half.

26.4 Time off instead of payment for overtime

[26.4 substituted by [PR584102](#) ppc 22Aug16]

- (a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (b) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 26.4.
- (c) An agreement must state each of the following:

- (i) the number of overtime hours to which it applies and when those hours were worked;
- (ii) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
- (iii) that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;
- (iv) that any payment mentioned in subparagraph (iii) must be made in the next pay period following the request.

Note: An example of the type of agreement required by this clause is set out at Schedule H. There is no requirement to use the form of agreement set out at Schedule H. An agreement under clause 26.4 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

- (d) The period of time off that an employee is entitled to take is the same as the number of overtime hours worked.

EXAMPLE: By making an agreement under clause 26.4 an employee who worked 2 overtime hours is entitled to 2 hours' time off.

- (e) Time off must be taken:
 - (i) within the period of 6 months after the overtime is worked; and
 - (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (f) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 26.4 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.
- (g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in paragraph (e), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (h) The employer must keep a copy of any agreement under clause 26.4 as an employee record.
- (i) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (j) An employee may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 26.4 will apply,

including the requirement for separate written agreements under paragraph (b) 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).

- (k) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 26.4 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 26.4.

Part 6—Leave and Public Holidays

27. Annual leave

[Varied by [PR583004](#)]

27.1 Annual leave is provided for in the NES.

27.2 During a period of annual leave an employee must also be paid an annual leave loading of 17.5%.

27.3 Annual leave in advance

[27.3 inserted by [PR583004](#) 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 27.3 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 27.3 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 27.3, 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.

27.4 Cashing out of annual leave

[27.4 inserted by [PR583004](#) ppc 29Jul16]

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 27.4.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 27.4.
- (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 27.4 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 27.4 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 27.4 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 27.4.

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 27.4.

Note 3: An example of the type of agreement required by clause 27.4 is set out at Schedule G. There is no requirement to use the form of agreement set out at Schedule G.

27.5 Excessive leave accruals: general provision

[27.5 inserted by [PR583004](#) ppc 29Jul16]

Note: Clauses 27.5 to 27.7 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.
- (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 27.6 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 27.7 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

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

[27.6 inserted by [PR583004](#) ppc 29Jul16]

- (a) If an employer has genuinely tried to reach agreement with an employee under clause 27.5(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 27.5, 27.6 or 27.7 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 27.6(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.

27.7 Excessive leave accruals: request by employee for leave

[27.7 inserted by [PR583004](#) ppc 29Jul16; substituted by [PR583004](#) ppc 29Jul17]

- (a) If an employee has genuinely tried to reach agreement with an employer under clause 27.5(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 27.6(a) that, when any other paid annual leave arrangements (whether made under clause 27.5, 27.6 or 27.7 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 27.5, 27.6 or 27.7 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 in any period of 12 months.
- (e) The employer must grant paid annual leave requested by a notice under paragraph (a).

28. Personal/carer's leave and compassionate leave

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

29. Community service leave

Community service leave is provided for in the NES.

30. Public holidays

30.1 Public holidays are provided for in the NES.

30.2 An employer and an employee may by agreement substitute another day for a public holiday.

31. Leave to deal with Family and Domestic Violence

[31 inserted by [PR609423](#) ppc 01Aug18]

31.1 This clause applies to all employees, including casuals.

31.2 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 31.2(a) includes a former spouse or de facto partner.

31.3 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.

31.4 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.

31.5 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.

31.6 Notice and evidence requirements

(a) Notice

An employee must give their employer notice of the taking of leave by the employee under clause 31. 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 31 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 31.4.

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.

31.7 Confidentiality

- (a) Employers must take steps to ensure information concerning any notice an employee has given, or evidence an employee has provided under clause 31.6 is treated confidentially, as far as it is reasonably practicable to do so.
- (b) Nothing in clause 31 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.

31.8 Compliance

An employee is not entitled to take leave under clause 31 unless the employee complies with clause 31.

Schedule A—Transitional Provisions

[Varied by [PR503723](#), [PR531302](#)]

A.1 General

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

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

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

A.2 Minimum wages – existing minimum wage lower

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

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

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

A.2.2 In this clause minimum wage includes:

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

- A.2.3** Prior to the first full pay period on or after 1 July 2010 the employer must pay no less than the minimum wage in the relevant transitional minimum wage instrument and/or award-based transitional instrument for the classification concerned.
- A.2.4** The difference between the minimum wage for the classification in this award and the minimum wage in clause A.2.3 is referred to as the transitional amount.
- A.2.5** From the following dates the employer must pay no less than the minimum wage for the classification in this award minus the specified proportion of the transitional amount:

First full pay period on or after

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

- A.2.6** The employer must apply any increase in minimum wages in this award resulting from an annual wage review.
- A.2.7** These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2014.

A.3 Minimum wages – existing minimum wage higher

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

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

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

- A.3.2** In this clause minimum wage includes:

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

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

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

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

[A.4 substituted by [PR531302](#) from 01Jan10]

For the purposes of this schedule loading or penalty means a

- Casual or part-time loading, including an all-up casual loading
- Saturday, Sunday, public holiday, evening or other penalty;
- Shift allowance/penalty.

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

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

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

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

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

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

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

First full pay period on or after

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

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

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

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

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

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

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

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

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

First full pay period on or after

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

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

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

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

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

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

First full pay period on or after

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

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

A.8 Former Division 2B employers

[A.8 inserted by [PR503723](#) ppc 01Jan11]

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

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

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

- A.8.4** Despite clause A.8.3, where a minimum wage, loading or penalty rate in a Division 2B State award immediately prior to 1 February 2011 was lower than the

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corresponding minimum wage, loading or penalty rate in this award, nothing in this Schedule requires a Division 2B employer to pay more than the minimum wage, loading or penalty rate in this award.

- A.8.5** Despite clause A.8.3, where a minimum wage, loading or penalty rate in a Division 2B State award immediately prior to 1 February 2011 was higher than the corresponding minimum wage, loading or penalty rate in this award, nothing in this Schedule requires a Division 2B employer to pay less than the minimum wage, loading or penalty rate in this award.
- A.8.6** In relation to a Division 2B employer this Schedule commences to operate from the beginning of the first full pay period on or after 1 January 2011 and ceases to operate from the beginning of the first full pay period on or after 1 July 2014.

Schedule B—Classification Structure and Definitions

[Sched B varied by [PR999528](#), [PR515150](#), [PR531302](#), [PR542214](#), [PR608870](#)]

B.1 Level 1

B.1.1 An employee at this level works under direct supervision with specific instructions and procedures and after appropriate in-house training. Duties may include any or all of the following:

- (a) general counter duties including reception, taking bookings, members and membership enquiries, sale of products, activities organising and customer liaison;
- (b) general tidying/cleaning of immediate work area;
- (c) undertaking structured training/learning in the following areas:
 - (i) clerical assistant duties including switchboard operation, reception, information services, taking bookings;
 - (ii) providing general assistance to employees of a higher grade, not including cooking or direct service to customers;
 - (iii) cleaning, tidying and setting up of kitchen, food preparation and customer service areas, including cleaning of equipment, crockery and general utensils;
 - (iv) assembly and preparation of ingredients for cooking;
 - (v) handling pantry items and linen;
 - (vi) setting and/or wiping down tables, removing food plates, emptying ashtrays and picking up glasses;
 - (vii) general cleaning, gardening and labouring tasks; and

[B.1.1(c)(viii) varied by [PR608870](#) ppc 16Jul18]

- (viii) door duties, attending a cloakroom or car park not involving the handling of cash; and

[B.1.1(c)(ix) inserted by [PR608870](#) ppc 16Jul18]

- (ix) swimming and water safety teaching. To avoid doubt, an employee is classified at Level 2 or above if their duties include being responsible for the provision of any part of swimming and water safety teaching without being directly supervised as part of structured training/learning.

B.2 Level 2

[B.2.1 substituted by [PR608870](#) ppc 16Jul18]

B.2.1 An employee at this level has:

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- (a) completed 456 hours training at Level 1 so as to enable the employee to perform work within the scope of this level;
- (b) a swim and water safety teacher or coach qualification; or
- (c) duties which include being responsible for the provision of any part of swimming and water safety teaching without being directly supervised as part of structured training/learning.

B.2.2 An employee at this level:

- (a) performs work above and beyond the skills of an employee at Level 1 and to the level of their training; and
- (b) works from instructions or procedures and under direct supervision either individually or in a team environment, and is primarily engaged in one or more of the following duties:
 - (i) assisting with classes and directing activities in a centre;

[B.2.2(b)(ii) varied by [PR608870](#) ppc 16Jul18]

- (ii) attending to equipment and displays, e.g. pool attendant - including basic pool plant duties (e.g. water quality testing) unless this work is performed by an employee at a higher classification level;
- (iii) providing customer advice, sales and services;
- (iv) operating a switchboard and/or telephone paging system;
- (v) clerical duties, involving intermediate keyboard skills with instructions;
- (vi) program/ticket selling and general sales involving receipt of monies and giving change, including operation of cash registers, use of electronic swipe input devices;
- (vii) laundry and/or cleaning duties involving the use of cleaning equipment and/or chemicals;
- (viii) maintaining general presentation of grounds;
- (ix) door duties, attending a cloak room or car park;
- (x) serving from a snack bar, buffet or meal counter;
- (xi) supplying, dispensing or mixing of liquor, including cleaning of bar area and equipment, preparing the bar for service, taking orders and serving drinks;
- (xii) non-cook duties in a kitchen;

[B.2.2(b)(xiii) substituted by [PR999528](#), [PR608870](#) ppc 16Jul18]

- (xiii) beginner swimming and water safety teacher, being a person who provides any part of swimming and water safety teaching without being

directly supervised as part of structured training/learning or the holder of any current qualification with the following competencies:

SISCAQU002 Perform basic water rescues

SISCAQU008 Instruct water familiarisation, buoyancy and mobility skills

SISCAQU009 Instruct water safety and survival skills

SISCAQU010 Instruct swimming strokes

These competencies reflect the Australian Skills Quality Authority's (ASQA) approved skill set for a Swimming and Water Safety Teacher. Any amendments to these competencies made by ASQA will apply for the purposes of interpreting this award.

[B.2.2(b)(xiv) substituted by [PR608870](#) ppc 16Jul18]

- (xiv) a coach of beginner swimmers (including mini and junior squads), being a holder of a current recognised "Junior Coach and Assistant Coach" swimming coaching qualification or equivalent.

B.3 Level 3

[B.3 varied by [PR999528](#); substituted by [PR515150](#), [PR531302](#) from 16Nov12]

B.3.1 An employee at this level works under general supervision which requires operation within defined areas of responsibility with adherence to established guidelines and procedures and who is employed to carry out work associated with the centre's operations.

B.3.2 An employee at this level is able to fulfil a role at Level 1 and 2 where relevant and supervises Level 1 and 2 employees where requested.

B.3.3 An employee at this level may also be:

- (a) an intermediate swimming and water safety teacher, being a holder of any current qualification with the competencies detailed in clause B.2.2(b)(xiii) above, who has:

[B.3.3(a)(i) substituted by [PR608870](#) ppc 16Jul18]

- (i) performed 12 hours per year of recognised workshops and 250 hours of paid swimming and water safety teaching under this award and who holds a second recognised instructing qualification, or

[B.3.3(a)(ii) substituted by [PR608870](#) ppc 16Jul18]

- (ii) delivered 350 hours of paid swimming and water safety teaching under this award; or

[B.3.3(b) substituted by [PR608870](#) ppc 16Jul18]

- (b) a coach of beginner swimmers (including mini and junior squads), being a holder of a current recognised “Bronze Licence for Coaching” swimming coaching qualification or equivalent.
- (c) a pool lifeguard who has completed a nationally-recognized Lifeguarding qualification, and has been appointed to the position of pool lifeguard by the employer.

B.4 Level 3A

[B.4 varied by [PR999528](#); substituted by [PR515150](#), [PR531302](#) from 16Nov12]

B.4.1 An employee at this level performs the duties of a Level 3 and who:

- (a) holds an Fitness Industry AQF Certificate Level III qualifications relevant to the classification in which they are employed or equivalent; and
- (b) utilises the skills and knowledge derived from the Fitness Industry AQF Certificate Level III competencies relevant to the work undertaken at this level.

[B.4.2 substituted by [PR542214](#) ppc 04Dec13]

B.4.2 Any dispute concerning an employee’s entitlement to be paid at Level 3A may be referred to the Fair Work Commission for determination. The Fair Work Commission may require an employee to demonstrate to its satisfaction that the employee utilises skills and knowledge derived from the Fitness Industry Certificate III competencies, and that these are relevant to the work the employee is doing.

B.5 Level 4

[B.5 substituted by [PR531302](#) from 16Nov12]

B.5.1 An employee at this level works under limited supervision and guidance and is required to exercise initiative and judgment in the performance of their duties and who is employed to carry out work associated with the centre’s operations.

B.5.2 An employee at this level receives broad instructions and their work is checked intermittently.

B.5.3 An employee at this level may also be:

- (a) an experienced swimming and water safety teacher, being a holder of any current qualification with the competencies detailed in clause B.2.2(b)(xiii) above, who has:

[B.5.3(a)(i) substituted by [PR608870](#) ppc 16Jul18]

- (i) performed 12 hours per year of recognised workshops and 500 hours of paid swimming and water safety teaching under this award and who holds a third recognised teaching qualification, or

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[B.5.3(a)(ii) substituted by [PR608870](#) ppc 16Jul18]

- (ii) delivered 700 hours of paid swimming and water safety teaching under this award, or

[B.5.3(b) varied by [PR608870](#) ppc 16Jul18]

- (b) a coach of beginner swimmers (including mini and junior squads), being a holder of a current recognised “Bronze Licence for Coaching” swimming coaching qualification or equivalent, who has:
 - (i) performed 12 hours per year of recognised workshops and 500 hours of coaching beginners and attended a recognised seminar/conference within the past 12 months, or
 - (ii) delivered 700 hours of coaching beginners.
- (c) a senior pool lifeguard, being a holder of industry-recognized pool lifeguard qualifications and who has been appointed by the employer to lead a team comprised of qualified pool lifeguards,

and/or persons undertaking a nationally-recognized course of Lifeguarding to become pool lifeguards.

B.6 Level 4A

[B.6 substituted by [PR531302](#) from 16Nov12]

B.6.1 An employee at this level performs the duties of a Level 4:

- (a) holds an Fitness Industry AQF Certificate Level IV qualifications relevant to the classification in which they are employed or equivalent;
- (b) utilises the skills and knowledge derived from the Fitness Industry AQF Certificate Level IV competencies relevant to the work undertaken at this level.

[B.6.2 substituted by [PR542214](#) ppc 04Dec13]

B.6.2 Any dispute concerning an employee’s entitlement to be paid at Level 4A may be referred to the Fair Work Commission for determination. The Fair Work Commission may require an employee to demonstrate to its satisfaction that the employee utilises skills and knowledge derived from the AQF Certificate Level IV competencies, and that these are relevant to the work the employee is doing.

B.7 Level 5

[B.7 substituted by [PR531302](#) from 16Nov12]

B.7.1 An employee at this level:

- (a) holds a Fitness Industry AQF Diploma level or equivalent;
- (b) utilises the skills and knowledge derived from the Fitness Industry AQF Diploma Level relevant to the work undertaken at this level;

- (c) is employed to carry out work associated with the classification of Fitness Trainer or Fitness Specialist; and
- (d) has demonstrated an ability to train or develop programs for special groups.

B.7.2 An employee at this level exercises high levels of initiative and judgment with broad instruction in the performance of their duties. An employee at this level would be able to supervise Level 4 employees where requested.

B.8 Level 6

[B.8 substituted by [PR531302](#) from 16Nov12]

B.8.1 An employee at this level has duties which include but are not limited to:

- (a) supervision of front desk, including customer liaison and rostering of front office staff;
- (b) supervision, training and co-ordination (including rostering) of employees within their respective work area to ensure delivery of service;
- (c) those of a trade qualified person in a single trade stream and the giving of trade directions to Level 1 to 5 employees;
- (d) supervision of floor staff; or
- (e) overseeing the day to day activities and operations of the business.

B.9 Level 7

[B.9 inserted by [PR531302](#) from 16Nov12]

B.9.1 An employee at this level is engaged in supervising, training and coordinating employees, is responsible for the maintenance of service and operational standards and exercises substantial responsibility and independent initiative and judgment with a requisite knowledge of their specific field and of the employer's business.

B.9.2 An employee at this level has:

- (a) worked or studied in a relevant field and/or has specialist knowledge, qualifications and experience;
- (b) formal trade or technical qualifications relevant to the employer in more than one trade or technical field, which are required by the employer to perform the job; or
- (c) specialist post-trade qualifications which are required by the employer to perform the job and organisation or industry specific knowledge sufficient for them to give advice and/or guidance to their organisation and/or clients in relation to specific areas of their responsibility.

B.9.3 Indicative duties at this level are:

- (a) general supervision of catering or retail functions;

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- (b) centre administration involving supervision of staff and systems and co-ordinating events; or
- (c) development of in-house training programs for instructors and co-ordinators.

[B.10 inserted by [PR531302](#) from 16Nov12]

B.10 Employees classified under the provisions of B.2.2(a), B.2.2(b), B.3.3, B.4.1, B.5.3, B.6.1, B.7.1, B.8.1, B.9.2 will hold, at all times, the relevant accreditations required by both this award's classification descriptors and state and territory legislation permitting work with children (e.g. Child Protection Police Checks). In the event of any employee losing, having suspended, or being refused such accreditation, they will advise their employer(s) within 14 days of such loss, refusal or suspension.

[B.11 inserted by [PR608870](#) ppc 16Jul18]

B.11 Any dispute concerning the correct classification for a swimming and water safety teacher or swimming coach will be referred to the Fair Work Commission for determination.

Schedule C—Supported Wage System

[Sched C varied by [PR998748](#), [PR510670](#), [PR525068](#), [PR537893](#), [PR542214](#), [PR551831](#), [PR568050](#), [PR581528](#), [PR592689](#), [PR606630](#)]

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

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

- C.2** In this schedule:

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

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

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

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

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

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

C.3 Eligibility criteria

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

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

C.4 Supported wage rates

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

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

[C.4.2 varied by [PR998748](#), [PR510670](#), [PR525068](#), [PR537893](#), [PR551831](#), [PR568050](#), [PR581528](#), [PR592689](#), [PR606630](#) ppc 01Jul18]

- C.4.2** Provided that the minimum amount payable must be not less than \$86 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 [PR542214](#) 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 [PR542214](#) 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](#) ppc 01Jul18]

C.10.3 The minimum amount payable to the employee during the trial period must be no less than \$86 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 varied by [PR997968](#), [PR509125](#), [PR522956](#), [PR536759](#), [PR545787](#), [PR551682](#), [PR566773](#), [PR579880](#); deleted by [PR593869](#) ppc 01Jul17]

Schedule E—2017 Part-day Public Holidays

[Sched E inserted by [PR532630](#) ppc 23Nov12; renamed and varied by [PR544519](#) ppc 21Nov13; renamed and varied by [PR557581](#), [PR573679](#), [PR580863](#), [PR598110](#) ppc 04Dec17]

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

- E.1** Where a part-day public holiday is declared or prescribed between 7.00 pm and midnight on Christmas Eve (24 December 2017) or New Year's Eve (31 December 2017) 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.
 - (b) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight 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.
 - (c) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of being on annual leave does not work, they will be taken not to be on annual leave between those hours of 7.00 pm and midnight that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.
 - (d) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight, 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) Excluding annualised salaried employees to whom clause E.1(f) applies, where an employee works any hours between 7.00 pm and midnight they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.
 - (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 7.00 pm and midnight.

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- (g) An employee not rostered to work between 7.00 pm and midnight, other than an employee who has exercised their right in accordance with clause E.1(a), will not be entitled to another day off, another day's pay or another day of annual leave as a result of the part-day public holiday.

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

This schedule is an interim provision and subject to further review.

Schedule F—Agreement to Take Annual Leave in Advance

[Sched F inserted by [PR583004](#) 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 [PR583004](#) 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—Agreement for Time Off Instead of Payment for Overtime

[Sched H inserted by [PR584102](#) ppc 22Aug16]

Link to PDF copy of [Agreement for Time Off Instead of Payment for Overtime](#).

Name of employee: _____

Name of employer: _____

The employer and employee agree that the employee may take time off instead of being paid for the following amount of overtime that has been worked by the employee:

Date and time overtime started: ____/____/20____ am/pm

Date and time overtime ended: ____/____/20____ am/pm

Amount of overtime worked: _____ hours and _____ minutes

The employer and employee further agree that, if requested by the employee at any time, the employer must pay the employee for overtime covered by this agreement but not taken as time off. Payment must be made at the overtime rate applying to the overtime when worked and must be made in the next pay period following the request.

Signature of employee: _____

Date signed: ____/____/20____

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____