

Legal Services Award 2010

The above award was first made on 4 December 2009 [[PR991083](#)]

This consolidated version of the award includes variations made on 4 June 2010 [[PR997772](#)]; 21 June 2010 [[PR998153](#)]; 21 June 2010 [[PR998016](#)]; 29 June 2010 [[PR998748](#)]; 6 December 2010 [[PR503655](#)]

NOTE: **Transitional provisions** may apply to certain clauses – see [clause 2](#) and [Schedule A](#)

To determine the transitional amount or loading, go to the version of this modern award in operation [prior to 1 July 2010](#) which does **not** include:

- (a) variations to minimum wages resulting from the Annual Wage Review 2009-10; or
- (b) variations in expense related allowances operative from 1 July 2010.

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Part 1—Application and Operation

1. Title

This award is the *Legal Services Award 2010*.

2. Commencement and transitional

2.1 This award commences on 1 January 2010.

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

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

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

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

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

2.6 Fair Work Australia may review the transitional arrangements:

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

3. Definitions and interpretation

[Varied by [PR997772](#), [PR503655](#)]

3.1 In this award, unless the contrary intention appears:

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

admission means admission as a practitioner of the Supreme Court of any State or Territory in the Commonwealth of Australia

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

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

[Definition of **Division 2B State award** inserted by [PR503655](#) 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 [PR503655](#) 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)

law clerk means a clerk who is engaged for the major part of their time in interviewing clients, preparing documents and general work assisting a barrister or solicitor in their practice, but will not include account clerks, law graduates, titles office clerks, receptionists and employees principally engaged in word processing, computer use, filing, machine operation, switchboard, delivery of documents or duties of a routine nature

law graduate means a lawyer not admitted to practice but who is undertaking a period of training within a law firm with the view to being admitted to practice

legal clerical and administrative employee means an employee in the clerical and administrative stream

legal services industry means employers engaged in the business of providing legal and legal support services

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

standard rate means the minimum wage for a Level 2 employee in clause 14—Minimum wages

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

work experience clerk means a person, whether a student or not, who is employed for not more than two months in any consecutive period of 12 months for the purposes of gaining experience, but does not include law students or any person who is undertaking work experience according to the provisions of the relevant State or Territory legislation or secondary school student on a formal work program

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

4. Coverage

4.1 This industry award covers employers throughout Australia in the legal services industry and their employees in the classifications listed in clause 14—Minimum wages to the exclusion of any other modern award. The award does not cover employers in the following industries:

- (a) community legal centres;
- (b) aboriginal legal services; or
- (c) an employer whose primary activity is not within the legal services industry.

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

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

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

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

4.6 This award covers employers which provide group training services for 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.

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

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

5. Access to the award and the National Employment Standards

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

6. The National Employment Standards and this award

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

7. Award flexibility

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

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

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

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

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

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

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- (a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;
 - (b) state each term of this award that the employer and the individual employee have agreed to vary;
 - (c) detail how the application of each term has been varied by agreement between the employer and the individual employee;
 - (d) detail how the agreement results in the individual employee being better off overall in relation to the individual employee's terms and conditions of employment; and
 - (e) state the date the agreement commences to operate.
- 7.5** The employer must give the individual employee a copy of the agreement and keep the agreement as a time and wages record.
- 7.6** Except as provided in clause 7.4(a) the agreement must not require the approval or consent of a person other than the employer and the individual employee.
- 7.7** An employer seeking to enter into an agreement must provide a written proposal to the employee. Where the employee's understanding of written English is limited the employer must take measures, including translation into an appropriate language, to ensure the employee understands the proposal.
- 7.8** The agreement may be terminated:
- (a) by the employer or the individual employee giving four weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or
 - (b) at any time, by written agreement between the employer and the individual employee.
- 7.9** The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between an employer and an individual employee contained in any other term of this award.

Part 2—Consultation and Dispute Resolution

8. Consultation regarding major workplace change

8.1 Employer to notify

- (a) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must notify the employees who may be affected by the proposed changes and their representatives, if any.
- (b) **Significant effects** include termination of employment; major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion

opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations; and the restructuring of jobs. Provided that where this award makes provision for alteration of any of these matters an alteration is deemed not to have significant effect.

8.2 Employer to discuss change

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

9. Dispute resolution

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

direction by the employer to perform work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

Part 3—Types of Employment and Termination of Employment

10. Types of employment

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

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

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

10.3 Full-time employment

- (a) The full-time hours are 38 per week.
- (b) Any employee not specifically engaged as being a part-time or casual employee is for all purposes of this award a full-time employee.

10.4 Part-time employment

- (a) A part-time employee is an employee who is engaged to perform less than 38 hours per week on a reasonably predictable basis.
- (b) A part-time employee must be paid for ordinary hours worked at the rate of 1/38th of the weekly rate prescribed for the class of work performed.
- (c) Part-time employees are entitled on a pro rata basis to equivalent pay and conditions to those of full-time employees.
- (d) Before commencing part-time employment, the employer and the employee must agree in writing:
 - (i) upon a regular pattern of work, specifying at least the numbers of hours worked each day, the days of the week upon which the employee will work and the commencing and finishing times for the work; and
 - (ii) the classification applying to the work to be performed.

The terms of this agreement may be varied by consent. Any variation to the agreement must be in writing and retained by the employer. A copy of the agreement and any variation to it must be provided to the employee by the employer.

- (e) The minimum period of engagement applying to part-time employees is three hours.

- (f) A part-time employee who is required by the employer to work in excess of the hours agreed upon in accordance with clause 10.4(d) must be paid overtime in accordance with clause 34—Overtime and penalty rates.

10.5 Casual employment

- (a) A casual is an employee engaged and paid as such.
- (b) A casual employee must be paid per hour at the rate of 1/38th of the weekly rate prescribed for the class of work performed, plus 25%. This loading is to be paid instead of entitlements to leave and other matters from which casuals are excluded by the terms of this award and the NES.
- (c) A casual employee must be paid for a minimum of four hours for each day that the casual employee is engaged.

11. Termination of employment

11.1 Notice of termination is provided for in the NES.

11.2 Notice of termination by an employee

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

11.3 Job search entitlement

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

12. Redundancy

[Varied by [PR503655](#)]

12.1 Redundancy pay is provided for in the NES.

12.2 Transfer to lower paid duties

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

12.3 Employee leaving during notice period

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

12.4 Job search entitlement

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

12.5 Transitional provisions – NAPSA employees

[12.5 renamed by [PR503655](#) ppc 01Jan11]

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

12.6 Transitional provisions – Division 2B State employees

[12.6 inserted by [PR503655](#) ppc 01Jan11]

- (a) Subject to clause 12.6(b), an employee whose employment is terminated by an employer is entitled to redundancy pay in accordance with the terms of a Division 2B State award:
 - (i) that would have applied to the employee immediately prior to 1 January 2011, if the employee had at that time been in their current circumstances

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of employment and no Division 2B State employment agreement or enterprise agreement had applied to the employee; and

- (ii) that would have entitled the employee to redundancy pay in excess of the employee's entitlement to redundancy pay, if any, under the NES.
- (b) The employee's entitlement to redundancy pay under the Division 2B State award is limited to the amount of redundancy pay which exceeds the employee's entitlement to redundancy pay, if any, under the NES.
- (c) This clause does not operate to diminish an employee's entitlement to redundancy pay under any other instrument.
- (d) Clause 12.6 ceases to operate on 31 December 2014.

Part 4—Minimum Wages and Related Matters

13. Classifications

13.1 Employees covered by this award must be classified according to the structure set out in Schedule B—Classifications and paid the minimum wage in clause 14—Minimum wages. Employers must advise their employees in writing of their classification and of any changes to their classification.

13.2 The classification by the employer must be according to the skill level or levels required to be exercised by the employee in order to carry out the principal functions of the employment as determined by the employer.

14. Minimum wages

[Includes minimum wage decision 1 July 2011]

Classification	Per week
	\$
Level 1—Legal clerical and administrative employee	657.62
Level 2—Legal clerical and administrative employee	686.16
Level 3—Legal clerical and administrative employee	724.83
Level 4—Legal clerical and administrative employee	761.02
Level 5—Legal clerical and administrative employee	792.04
Level 5—Law graduate	792.04
Level 6—Law clerk	839.60

15. Junior employees

Junior employees must be paid the following percentage of the appropriate wage rate in clause 14—Minimum wages.

Age	%
Under 16 years	45
16 years	50
17 years	60
18 years	70
19 years	80
20 years	90

16. Higher duties

An employee, whilst called upon to perform any of the duties set out in Levels 2–5 of Schedule B—Classifications, in the absence of the employee normally exercising such duties, or whilst called upon to perform such duties on a temporary basis, must be paid at least the rate which would be applicable if such duties were performed on a permanent basis; provided that this clause does not apply when the time period is of less than one day’s duration.

17. Supported wage system

See Schedule C

18. National training wage

See Schedule D

19. Allowances

[Varied by [PR998153](#)]

19.1 Meal allowance

[19.1 varied by [PR998153](#) ppc 01Jul10]

An employee must be supplied with an adequate meal where an employer has their own cooking and dining facilities or be paid meal money in addition to any overtime payment as follows:

- (a) when required to work not less than one hour of overtime (Monday to Friday inclusive) and such overtime finishes one and a half hours after the normal finishing time or five hours after the preceding meal break, whichever first occurs, or in the case of a shiftworker when the overtime work on any shift exceeds one hour, \$12.90. Provided that where such overtime work exceeds four hours a further meal allowance of \$10.27 must be paid;

- (b) when required to work more than five hours overtime on a Saturday or a Sunday, or more than five hours by a shiftworker on their rostered day off, \$12.90 and a further \$10.27 when required to work more than nine hours on such day. The provisions of this clause will not apply where an employee could reasonably return home for a meal within the period allowed; and
- (c) on request, meal money must be paid on the same day as overtime is worked.

19.2 Uniform allowance

Where an employer requires an employee to wear any special uniform, dress or clothing, such employee must be paid an allowance of \$3.65 per week unless such uniform, dress, or clothing is supplied and laundered by the employer.

19.3 Vehicle allowance

- (a) Where an employer requires an employee to use an employee's own motor vehicle in the performance of the employees duties such employee must be paid an allowance of \$0.25 per kilometre for a motorcycle and \$0.74 per kilometre for a motor car on any day when the employee is so required to use their vehicle.
- (b) Where an employee is required as a condition of employment to provide a motor vehicle, which is used in the performance of the employees duties, all expenses including registration, running and maintenance of such motor vehicle must be paid by the employer.

19.4 Transport of employees—overtime

When an employee is required to work overtime and such overtime concludes when reasonable means of transport to the employee's home is not reasonably available, the employer will reimburse the employee an amount equal to the cost of any transport which allows the employee to reach the employee's home by other means of transport, unless the employer provides suitable transport.

19.5 Living away from home allowance

- (a) An employee, required by the employer to work temporarily for the employer away from the employee's usual place of employment, and who is required to sleep away from the employee's usual place of residence, will be entitled to the following:
 - (i) the payment of an allowance to cover all fares to and from the place at which the employer requires the employee to work; and
 - (ii) the payment of an allowance to cover all reasonable expenses incurred for board and lodging.
- (b) The allowances referred to in this clause will not be paid where the fares and the board and lodging are provided by the employer.
- (c) In addition to the above, the employee must receive payment at ordinary rates of pay for all time spent in travelling between the employee's usual place of employment and the temporary location, such paid time not to exceed eight hours in 24 hours.

19.6 Protective clothing

The employer will reimburse employees engaged in work damaging to clothing an amount equal to the costs of uniforms and/or protective clothing, except where uniforms and/or protective clothing are provided free of charge by the employer.

19.7 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
Uniform allowance	Clothing and footwear group
Vehicle allowance	Private motoring sub-group

20. District allowances

20.1 Northern Territory

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

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

20.2 Western Australia

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

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

20.3 This clause ceases to operate on 31 December 2014.

21. Accident pay

[Varied by [PR503655](#)]

[21.1 substituted by [PR503655](#) ppc 01Jan11]

21.1 Subject to clause 21.2, an employee is entitled to accident pay in accordance with the terms of an award made under the *Workplace Relations Act 1996* (Cth) that would have applied to the employee immediately prior to 27 March 2006, a notional agreement preserving a State award that would have applied to the employee immediately prior to 1 January 2010 or a Division 2B State award that would have applied to the employee immediately prior to 1 January 2011:

- (a) if the employee had at that time been in their current circumstances of employment and no agreement-based transitional instrument, enterprise agreement or Division 2B State employment agreement had applied to the employee; and
- (b) that would have entitled the employee to accident pay in excess of the employee's entitlement to accident pay, if any, under any other instrument.

[21.2 substituted by [PR503655](#) ppc 01Jan11]

21.2 The employee's entitlement to accident pay under the award, the notional agreement preserving a State award or the Division 2B State award is limited to the amount of accident pay which exceeds the employee's entitlement to accident pay, if any, under any other instrument.

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

21.4 This clause ceases to operate on 31 December 2014.

22. Payment of wages

22.1 An employee will be paid fortnightly unless the employer and the employee otherwise agree.

22.2 Method of payment

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

23. Superannuation

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) Legalsuper;
- (b) AustralianSuper;
- (c) Tasplan;
- (d) CareSuper;
- (e) Statewide Superannuation Trust;
- (f) Asset Super; or
- (g) any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund or its successor is an eligible choice fund.

Part 5—Hours of Work and Related Matters

24. Ordinary hours of work and rostering (day workers)

24.1 Weekly hours of work

- (a) The ordinary hours of work for day workers are to be an average of 38 per week but not exceeding 152 hours in 28 days.
- (b) The ordinary hours of work may be worked on any day or all of the days of the week, Monday to Friday.
- (c) The ordinary hours of work are to be worked continuously, except for meal breaks, at the discretion of the employer between 7.00 am to 6.30 pm, Monday to Friday. The spread of hours may be altered by up to one hour at either end of the spread, by agreement between the employer and the majority of employees concerned.
- (d) Any work performed outside the spread of hours is to be paid for at overtime rates. However any work performed by an employee prior to the spread of hours which is continuous with ordinary hours for the purpose, for example, of getting the workplace in a state of readiness for other employees to start work is to be regarded as part of the 38 ordinary hours of work.
- (e) **Rostered days off**

Arrangements for rostered days off may be reached between an employee and an employer. Such arrangements will outline the method of accruing time towards a rostered day off as well as an agreed method of accumulating and taking rostered days off.

25. Ordinary hours of work (continuous shiftworkers)

- 25.1** Continuous shiftwork means work carried on with consecutive shifts of employees throughout the 24 hours of each of at least six consecutive days without interruption except for breakdowns or meal breaks or due to unavoidable causes beyond the control of an employer.
- 25.2** Subject to clause 25.3, the ordinary hours of continuous shiftworkers are, at the discretion of the employer, to average 38 hours per week inclusive of meal breaks and must not exceed 152 hours in 28 consecutive days. Continuous shiftworkers are entitled to a 12 minute meal break on each shift which will be counted as time worked.
- 25.3** By agreement between an employer and the majority of employees concerned, a roster system may operate on the basis that the weekly average of 38 ordinary hours is achieved over a period which exceeds 28 consecutive days but does not exceed 12 months.
- 25.4** Except at the regular changeover of shifts, an employee must not be required to work more than one shift in each 24 hours.

26. Ordinary hours of work (non-continuous shiftworkers)

- 26.1** The ordinary hours of work for non-continuous shiftworkers are to be an average of 38 per week and must not exceed 152 hours in 28 consecutive days.
- 26.2** By agreement between an employer and the majority of employees concerned, a roster system may operate on the basis that the weekly average of 38 ordinary hours is achieved over a period which exceeds 28 consecutive days but does not exceed 12 months.
- 26.3** The ordinary hours of work are to be worked continuously, except for meal breaks, at the discretion of the employer.
- 26.4** Except at changeover of shifts, an employee will not be required to work more than one shift in each 24 hours.

27. Methods of arranging ordinary working hours

Subject to the employer's right to fix the daily hours of work for day workers from time to time within the spread of hours referred to in this award and the employer's right to fix the commencing and finishing time of shifts from time to time, the arrangement of ordinary working hours is to be by agreement between the employer and the majority of employees in the enterprise or part of the enterprise concerned. This does not preclude an employer reaching agreement with individual employees about how their working hours are to be arranged.

28. Daylight saving

- 28.1** Where by reason of State legislation, summer time is prescribed as being in advance of the standard time in that State the length of any shift:
- (a) commencing before the time prescribed by the relevant legislation for the commencement of a summer time period; or
 - (b) commencing on or before the time prescribed by such legislation for the termination of a summer time period,

will be deemed to be the number of hours represented by the difference between the time recorded by the clock at the beginning of the shift and the time so recorded at the end of the shift. The time of the clock in each case is to be set to the time fixed by the relevant State legislation.

- 28.2** In this clause, the expressions standard time and summer time have the same meaning as are prescribed by the relevant State legislation.

29. Make-up time

- 29.1** 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 the award.

- 29.2** An employee on shiftwork 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, at the shiftwork rate which would have been applicable to the hours taken off.

30. Annualised salaries

30.1 Annual salary instead of award provisions

- (a) An employer may pay an employee an annual salary in satisfaction of any or all of the following provisions of the award:
- (i) clause 14—Minimum wages;
 - (ii) clause 19—Allowances;
 - (iii) clause 34—Overtime and penalty rates; and
 - (iv) clause 35.3—Annual leave loading.
- (b) Where an annual salary is paid the employer must advise the employee in writing of the annual salary that is payable and which of the provisions of this award will be satisfied by payment of the annual salary.

30.2 Annual salary not to disadvantage employees

- (a) The annual salary must be no less than the amount the employee would have received under this award for the work performed over the year for which the salary is paid (or if the employment ceases earlier over such lesser period as has been worked).
- (b) The annual salary of the employee must be reviewed by the employer at least annually to ensure that the compensation is appropriate having regard to the award provisions which are satisfied by the payment of the annual salary.

30.3 Base rate of pay for employees on annual salary arrangements

For the purposes of the NES, the base rate of pay of an employee receiving an annual salary under this clause comprises the portion of the annual salary equivalent to the relevant rate of pay in clause 14—Minimum wages and excludes any incentive-based payments, bonuses, loadings, monetary allowances, overtime and penalties.

31. Shiftwork

31.1 Definitions

- (a) For the purposes of this award:
- (i) **rostered shift** means any shift of which the employee concerned has had at least 48 hours' notice;
 - (ii) **afternoon shift** means any shift finishing after 6.00 pm and at or before midnight;

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- (iii) **night shift** means any shift finishing subsequent to midnight and at or before 8.00 am;
 - (iv) **early morning shift** applies to an employee whose ordinary hours on a regular shift commence between 5.00 am and 6.00 am, except where such a shift is part of a shift system and preceding an afternoon shift finishing at 11.00 pm; and
 - (v) **seven day shiftworker** means an employee who is rostered to work regularly on Sundays and public holidays.
- (b) By agreement between an employer and the majority of employees concerned, or in appropriate cases an individual employee, the span of hours over which shifts may be worked may be altered by up to one hour at either end of the span.

31.2 Early morning, afternoon and night shift allowances

- (a) An employee whilst on afternoon or night shift must be paid for such shift 15% more than their ordinary rate.
- (b) An employee whilst on early morning shift must be paid for such shift 10% more than their ordinary rate.
- (c) An employee who works on an afternoon or night shift which does not continue:
 - (i) for at least five successive afternoon or night shifts or six successive afternoon or night shifts in a six day workplace (where no more than eight ordinary hours are worked on each shift); or
 - (ii) for at least 38 ordinary hours (where more than eight ordinary hours are worked on each shift),

must be paid a loading for each shift of 50% for the first three hours and 100% for the remaining hours, in addition to their ordinary rate.

- (d) An employee who:
 - (i) during a period of engagement on shift, works night shift only;
 - (ii) remains on night shift for a longer period than four consecutive weeks; or
 - (iii) works on a night shift which does not rotate or alternate with another shift or with day work so as to give the employee at least one third of their working time off night shift in each shift cycle,

must, during such engagement, period or cycle, be paid 30% more than their ordinary rate for all time worked during ordinary working hours on such night shift.

31.3 Rate for working on Saturday shifts

The minimum rate to be paid to a shiftworker for work performed between midnight on Friday and midnight on Saturday will be time and a half. This extra rate is in substitution for and not cumulative upon the shift allowance prescribed in clause 31.2.

31.4 Rate for working on Sunday and public holiday shifts

- (a) The rate at which continuous shiftworkers are to be paid for work on a rostered shift, the major portion of which is performed on a Sunday or public holiday, is double time.
- (b) The rate at which shiftworkers, other than continuous shiftworkers on other than continuous work, are to be paid for all time worked on a Sunday or public holiday is as follows:
 - (i) Sundays—at the rate of double time; and
 - (ii) public holidays—at the rate of double time and a half.
- (c) Where shifts commence between 11.00 pm and midnight on a Sunday or public holiday, the time so worked before midnight does not entitle the employee to the Sunday or public holiday rate for the shift. However, the time worked by an employee on a shift commencing before midnight on the day preceding a Sunday or public holiday and extending into the Sunday or public holiday will be regarded as time worked on the Sunday or public holiday.
- (d) Where shifts fall partly on a public holiday, the shift which has the major portion falling on the public holiday will be regarded as the public holiday shift.
- (e) By agreement between an employer and the majority of employees concerned, the shift which has the minor portion falling on the public holiday may be regarded as the public holiday shift instead of the above.
- (f) The extra rates in this subclause are in substitution for and not cumulative upon the shift allowances prescribed in clause 31.2.

31.5 Work on a rostered day off

- (a) An employee required to work on a rostered day off is entitled to the rate prescribed in clause 34.1. Provided that time worked on Sundays must be paid for at the rate of double time and time worked on public holidays must be paid for at the rate of double time and a half.
- (b) Where work is performed as in clause 31.5(a) on a Sunday or public holiday, such employee must be paid a minimum of four hours at the appropriate rate.
- (c) This extra rate is in substitution for and not cumulative upon the shift allowances prescribed in clause 31.2.
- (d) A shiftworker whose rostered day off coincides with a public holiday must be paid a day's pay additional to their weekly wage, or have a day added to their annual leave.

32. Rosters

32.1 Rosters, where they apply, will be set for each fortnightly period. The roster may alter the times on which an employee works their ordinary hours.

32.2 An employer will give employees 14 days' notice of each fortnightly roster. However, in order to meet specific operational requirements, an employer may change rosters after consulting with the employee(s) concerned and giving them as much notice as possible.

33. Breaks

33.1 Meal break

(a) A meal break of not less than 30 minutes and not more than 60 minutes must be allowed to each employee. The meal break must be taken not later than five hours after commencing work and after the resumption of work from a previous meal break.

(b) An employee directed by an employer to work in excess of five hours without a meal break must be paid at the rate of time and a half for the meal break and the employee must be permitted to have the employee's usual meal break without deduction from the employee's wage as soon as possible after the prescribed meal break.

(c) This clause will not operate outside an employee's ordinary working hours. Meal breaks during overtime are prescribed in clause 34—Overtime and penalty rates.

33.2 Rest break

(a) All employees will be allowed two rest intervals on each day as follows:

(i) the first of 10 minutes to be allowed between the time of commencing work and the usual meal interval; and

(ii) the second of 10 minutes to be allowed between the usual meal interval and the time of ceasing work for the day.

(b) All employees who work more than four hours on a Saturday before 12 noon must be allowed a rest period of 10 minutes between the times of commencing work and finishing work.

(c) Such intervals are to be counted as part of time worked.

34. Overtime and penalty rates

34.1 Payment for working overtime

(a) Overtime will be paid for all time worked outside ordinary hours on any day or shift, or in excess of an average of 38 hours per week, at the rate of time and a half for the first three hours and double time thereafter.

(b) For continuous shiftworkers the rate for working overtime is double time.

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- (c) The hourly rate, when calculating overtime, is to be determined by dividing the appropriate weekly rate by 38, even in cases when an employee works more than 38 ordinary hours in a week. Any portion of one hour not exceeding 30 minutes will be reckoned as 30 minutes and any portion of one hour in excess of 30 minutes will be reckoned as one hour.
- (d) When not less than 7 hours 36 minutes' notice has been given to an employer by a relief shiftworker that they will be absent from work and the shiftworker whom that person should relieve is not relieved and is required to continue work on their rostered day off, the unrelieved employee will be paid double time.
- (e) When calculating overtime, each day is to stand alone.

34.2 Payment for working Saturdays and Sundays

An employee required to work overtime on a Saturday after 12 noon and on Sunday must be paid at double time with a minimum payment of three hours.

34.3 Payment for public holiday work

An employee required to work overtime on a public holiday must be paid double time and a half for a minimum of three hours.

34.4 Rest break

- (a) An employee working overtime must be allowed a rest break of 20 minutes without deduction of pay after each four hours of overtime worked if the employee is to continue work after the rest break.
- (b) Where an employee is required to work overtime on a Saturday, Sunday or public holiday or on a rostered day off, the first rest break will be paid at the employee's ordinary rate of pay.
- (c) Where overtime is to be worked immediately after the completion of ordinary work on a day or shift and the period of overtime is to be more than one and a half hours, an employee, before starting the overtime, is entitled to a rest break of 20 minutes to be paid at the employee's ordinary rate of pay.
- (d) An employer and employee may agree to any variation of this subclause to meet the circumstances of the work in hand provided that the employer is not required to make any payment in excess of or less than what would otherwise be required under this clause.

34.5 Time off instead of payment for overtime

- (a) An employee may elect, with the consent of the employer, to take time off instead of payment for overtime at a time or times agreed with the employer within 12 months.
- (b) Overtime taken as time off during ordinary time hours will be taken at the ordinary time rate; that is, an hour for each hour worked.
- (c) If, having elected to take time as leave and the leave is not taken for whatever reason, payment for time accrued at overtime rates will be made at the expiry of the 12 month period or on termination.

- (d) The employer must keep accurate records of time accrued as time off instead of payment for overtime.

34.6 Rest period after overtime

- (a) When overtime work is necessary it must, wherever reasonably practicable, be so arranged that employees have at least 10 consecutive hours off duty between the work of successive working days.
- (b) An employee, other than a casual employee, who works so much overtime between the termination of their ordinary work on one day and the commencement of their ordinary work on the next day that the employee has not had at least 10 consecutive hours off duty between those times must, subject to this clause, be released after completion of the overtime until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- (c) If, on the instruction of the employer, an employee resumes or continues work without having had the 10 consecutive hours off duty, the employee must be paid at double time until they are released from duty for such period. The employee is then entitled to be absent until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during the absence.
- (d) By agreement between an employer and individual employee, the 10 hour break provided for in this clause may be reduced to a period no less than eight hours.
- (e) The provisions of this subclause will apply in the case of shiftworkers as if eight hours were substituted for 10 hours when overtime is worked:
 - (i) for the purpose of changing shift rosters;
 - (ii) where a shiftworker does not report for duty and a day worker or a shiftworker is required to replace the shiftworker; or
 - (iii) where a shift is worked by arrangement between the employees themselves.

34.7 Call-back

- (a) An employee recalled to work overtime after leaving the employer's place of work (whether notified before or after leaving the place of work) is to be paid for a minimum of four hours' work at the rate of time and a half for the first three hours and double time thereafter (or double time for the full period for continuous shiftworkers).
- (b) Where an employee is required to regularly hold themselves in readiness for a call-back they will be paid for a minimum of three hours' work at the appropriate overtime rate. This is subject to clause 34.8.
- (c) If the employee is recalled on more than one occasion between the termination of their ordinary work on one day and the commencement of their ordinary work on the next ordinary working day they will be entitled to the three or four hour minimum overtime payment provided for in this clause for each call-back.

However, in such circumstances, it is only the time which is actually worked during the previous call or calls which is to be taken into account when determining the overtime rate for subsequent calls.

- (d) Except in the case of unforeseen circumstances arising, an employee will not be required to work the full three or four hours as the case may be if the job they were recalled to perform is completed within a shorter period.
- (e) This clause does not apply in cases where it is customary for an employee to return to the employer's enterprise to perform a specific job outside the employee's ordinary working hours or where the overtime is continuous (subject to a meal break) with the commencement or completion of ordinary working time.
- (f) Overtime worked in the circumstances specified in this subclause is not to be regarded as overtime for the purpose of clause 34.6 when the actual time worked is less than three hours on the call-back or on each call-back.

34.8 Standing by

Subject to any custom prevailing at the place of work concerned, where an employee is required regularly to hold themselves in readiness to work after ordinary hours, the employee is to be paid standing by time at the employee's ordinary rate of pay for the time they are standing by.

Part 6—Leave and Public Holidays

35. Annual leave

35.1 Annual leave is provided for in the NES.

35.2 Definition of shiftworker

For the purposes of the additional week or annual leave provided for in the NES, a **shiftworker** is a seven day shiftworker who is rostered to work regularly on Sundays and public holidays.

35.3 Annual leave loading

- (a) During a period of annual leave an employee must also receive a loading calculated on the wages prescribed in clause 14—Minimum wages of this award. Annual leave loading payment is payable on leave accrued.
- (b) The loading must be as follows:
 - (i) **Day work**

Employees who would have worked on day work only had they not been on leave—17.5%;

(ii) Shiftwork

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

35.4 Paid leave in advance of accrued entitlement

- (a) An employer may allow an employee to take annual leave either wholly or partly in advance before the leave has accrued.
- (b) Where paid leave has been granted to an employee in excess of the employee's accrued entitlement, and the employee subsequently leaves or is discharged from the service of the employer before completing the required amount of service to account for the leave provided in advance, the employer is entitled to deduct the amount of leave in advance still owing from any remuneration payable to the employee upon termination of employment.

35.5 Payment for period of leave

Each employee prior to commencing a period of annual leave must be paid a sum equal to the wages the employee would have received in respect of the ordinary time the employee would have worked had the employee not been on leave.

36. Personal/carer's leave and compassionate leave

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

37. Community service leave

Community service leave is provided for in the NES.

38. Public holidays

Public holidays are provided for in the NES.

39. Special conditions of employment—Law graduate

39.1 A law graduate is entitled to leave of absence with pay:

- (a) for study and attendance at examinations, not exceeding four days in respect of each subject for which they present themselves for examination which is necessary to enable the employee to qualify for admission; and
- (b) to attend lectures and organised classes at a university or other course of instruction which is required to enable the employee to qualify for admission.

Schedule A—Transitional Provisions

[Varied by [PR503655](#)]

A.1 General

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

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

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

A.2 Minimum wages – existing minimum wage lower

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

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

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

A.2.2 In this clause minimum wage includes:

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

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

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

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

First full pay period on or after

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

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

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

A.3 Minimum wages – existing minimum wage higher

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

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

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

A.3.2 In this clause minimum wage includes:

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

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

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

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

First full pay period on or after

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

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

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

A.4 Loadings and penalty rates

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

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

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

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

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

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

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

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

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 [PR503655](#) ppc 01Jan11]

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

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

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

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

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

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

Schedule B—Classifications

B.1 Level 1—Legal, clerical and administrative employee

B.1.1 Characteristics

- (a) Employees at this level may work under direct supervision with regular checking, but may take the form of less direct guidance and some autonomy where working in teams is required.
- (b) Competency at this level involves the application of knowledge and skill to a limited range of tasks and roles. There is a specified range of contexts where the choice of actions required is clear.
- (c) Competencies are used within established routines, methods and procedures that are predictable and within which judgment against established criteria is involved.
- (d) An indicative training and vocational educational level for this level is Year 10 standard.

B.1.2 Generic skills

Indicative typical duties and skills at this level may include:

(a) Problem solving

Identify and resolve problems by being able to:

- identify routine problems;
- identify and assess options; and
- implement solutions.

(b) Literacy

Read and write routine texts.

(c) Numeracy

Use numbers in the workplace by being able to:

- operate with numbers to complete routine tasks;
- calculate numerical and related information to perform routine tasks; and
- interpret and present numerical and related information to complete routine tasks.

B.1.3 Core skills

(a) Information handling

- (i) To handle mail to facilitate communication by being able to:
- receive and distribute incoming mail;
 - receive and dispatch outgoing mail; and
 - collate and dispatch documents for bulk mailing.
- (ii) To handle information to maintain access to and security of records by being able to:
- file documents; and
 - identify and retrieve documents.

(b) Communication

To process information to facilitate communication flow by being able to:

- receive and relay oral messages; and
- receive and relay written messages.

(c) Enterprise/industry

To apply knowledge of the enterprise/industry to complete routine administrative tasks, by being able to:

- identify key functions and personnel/departments; and
- apply office procedures.

(d) Technology

- (i) To operate a range of office equipment to complete routine tasks by being able to:
- select equipment to be used for tasks;
 - locate equipment to be used for tasks; and
 - operate equipment.
- (ii) To access and retrieve computer data using keyboard skills by being able to:
- open files;
 - retrieve data;
 - close files; and
 - shut down equipment.

(e) **Organisational**

To follow established work schedules to achieve designated group/section goals by being able to plan and organise personal daily work routine.

(f) **Team**

To participate in a team to achieve designated tasks by being able to complete allocated tasks.

(g) **Business/financial**

To record and prepare financial documentation for cash flow and accounting records by being able to:

- record petty cash transactions;
- prepare banking documents; and
- prepare business source documents.

(h) **Legal**

Not applicable at this level.

B.2 Level 2—Legal, clerical and administrative employee

B.2.1 Characteristics

- (a) Employees at this level may work under routine supervision with intermittent checking, but this checking may take the form of general guidance and considerable autonomy where working in teams is required. Responsibility for some roles and co-ordination within a team may be required.
- (b) Competency at this level involves the application of knowledge and skills to a range of tasks and roles. There is a defined range of contexts where the choice of actions required is usually clear, with limited complexity in the choice.
- (c) Competencies are used within established routines, methods and procedures, in some cases involving discretion and judgment about possible actions.
- (d) An indicative training and vocational educational level for this level is Year 11 standard.

B.2.2 Generic skills

As per Level 1.

B.2.3 Core skills

As per Level 1, together with the following:

(a) **Information handling**

Process information to provide access to current records, by being able to:

- update and modify existing organisational records; and

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- remove inactive and dead files.

(b) Communication

Process and respond to information to facilitate communication flow by being able to:

- respond to incoming telephone calls;
- make telephone calls; and
- draft simple correspondence.

(c) Enterprise/industry

(i) Respond to and act upon internal/external enquiries to promote the products and services of the organisation by being able to:

- provide information from own function area;
- re-direct enquiries; and
- undertake follow up action where required.

(ii) Receive visitors to ensure a positive image of the organisation is presented by being able to:

- greet visitors; and
- attend to visitors' needs.

(d) Technology

(i) Operate a range of office equipment to complete non-routine tasks by being able to:

- operate equipment; and
- identify and/or rectify minor faults.

(ii) Edit computer data using keyboard skills by being able to:

- open files;
- edit information;
- save and exit; and
- shut down equipment.

(iii) Produce simple documents using keyboard skills by being able to document from written text using standard format.

(e) Organisation

Establish own work schedule to achieve designated group/section goals by being able to organise own work schedule.

(f) Team

Participate in allocation and completion of team tasks by being able to:

- participate in identifying tasks for team;
- complete own tasks; and
- assist others to complete (team) tasks.

(g) Business/financial

Process financial documentation for cash flow and accounting records by being able to:

- reconcile invoices for payment to creditors;
- prepare statements for debtors;
- enter payment summaries into journals; and
- post journals to ledgers.

(h) Legal

Not applicable at this level.

B.3 Level 3—Legal, clerical and administrative employee

B.3.1 Characteristics

- (a) Work is under limited supervision with checking related to overall progress, but may take the form of broad guidance and autonomy where working in teams is required. Responsibility for the work of others may be involved, and team co-ordination may be required.
- (b) Competency at this level involves the application of knowledge with depth in some areas and a broad range of skills. There is a range of tasks and roles in a variety of contexts, with some complexity in the extent and choice of actions required. Competencies are used within routines, methods and procedures where some discretion and judgment is required in selection of equipment, work organisation, services, actions and achieving outcomes within time constraints.
- (c) An indicative training and educational level for this level is the Trade Certificate or equivalent TAFE/Year 12 standard.

B.3.2 Generic skills

As per Levels 1 and 2, together with the following:

(a) Problem solving

Identify, clarify and resolve problems by being able to:

- identify non-routine problems;
- clarify the nature of the problem;

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- investigate options and decide on the appropriate course of action;
- implement solutions;
- evaluate and report on effectiveness of solutions and related outcomes;
- assist others to identify and resolve problems in the workplace; and
- report on effectiveness of solutions and related outcomes.

(b) Literacy

- write non-routine texts; and
- read non-routine texts.

(c) Numeracy

Use numbers in the workplace by being able to:

- operate with numbers to complete non-routine tasks;
- calculate numerical and related information to perform non-routine tasks; and
- interpret and present numerical and related information to complete non-routine tasks.

B.3.3 Core skills

As per Levels 1 and 2, together with the following:

(a) Information handling

Maintain information records system to ensure integrity of system by being able to:

- assemble new files;
- identify and process inactive and dead files; and
- record documentation movements.

(b) Communication

(i) Collect and provide information to facilitate communication flow by being able to:

- respond to telephone, oral and written requests for information; and
- draft routine correspondence in response to a need or request.

(ii) Transcribe oral instructions by writing shorthand notes for the production of a text by being able to take dictation.

(c) Enterprise/industry

- (i)** Provide information and advice to promote the products/services of the organisation by being able to:
- clarify specific needs of a client;
 - provide information and advice; and
 - follow up.
- (ii)** Process client complaints to ensure the goals of the organisation are met by being able to:
- clarify the nature of the complaint;
 - identify options for resolution; and
 - act to resolve the complaint.

(d) Technology

- (i)** Co-ordinate the use of a range of office equipment to complete complex tasks by being able to:
- operate equipment; and
 - maintain equipment.
- (ii)** Organise the copying, collating and binding of documents by being able to:
- select appropriate media;
 - copy and collate documents; and
 - distribute documents.
- (iii)** Produce complex documents using keyboard skills by being able to:
- establish document structure;
 - produce documents; and
 - shut down equipment.

(e) Organisational

Organise schedules to achieve agreed group/section goals by being able to:

- co-ordinate own work routine with others;
- make and record appointments on behalf of another; and
- make travel and accommodation bookings in line with given itinerary.

(f) Team

Negotiate with team members to allocate and complete tasks to achieve group goals by being able to:

- clarify tasks to achieve group goals;
- negotiate allocation of tasks; and
- monitor completion of allocated tasks.

(g) Business/financial

(i) Monitor records of income and expenditure for budgetary records by being able to:

- reconcile accounts to balance; and
- prepare bank reconciliations.

(ii) Monitor cash control accounting purposes by being able to:

- document and lodge takings at a bank;
- receive and document payments/takings;
- dispatch statements to debtors;
- follow up and record outstanding accounts; and
- dispatch payments to creditors.

(iii) Monitor stock levels for control purposes by being able to maintain stock control records.

(h) Legal

An understanding of the basic structures of the relevant State or Territory legal system by being able to:

- locate the major legal institutions and process standard legal procedures;
- operate within the information channels and procedures of the institutions; and
- exhibit a basic understanding of areas of law for the purposes of information flow and referral.

B.4 Level 4—Legal, clerical and administrative employee

B.4.1 Characteristics

(a) The employee may be required to work without supervision, with general guidance on progress and outcomes sought as required. The work of others may be supervised or teams guided or facilitated. Responsibility for and limited organisation of the work of others may be involved.

- (b) Competency at this level involves the application of knowledge with depth in some areas and a broad range of skills. There is a wide range of tasks and roles in a variety of contexts, with complexity in the range and choice of actions required.
- (c) Competencies are used within routines, methods and procedures where discretion and judgment is required, for both self and others, in planning and selection of equipment, work organisation, services, actions and achieving outcomes within time constraints.
- (d) An indicative training and vocational educational level for this level is TAFE Advanced Certificate.

B.4.2 Generic skills

As per Levels 1, 2 and 3 together with the following:

(a) Problem solving

Identify, clarify and resolve problems by being able to:

- identify problems;
- clarify the nature of the problem;
- determine criteria for optimal solution;
- implement solution;
- evaluate and report on effectiveness of solution and related outcomes; and
- assist others to identify, clarify and resolve problems in the workplace.

(b) Literacy

- compose routine and non-routine texts; and
- read and analyse routine and non-routine texts.

(c) Numeracy

Use numbers in the workplace by being able to:

- operate with numbers to establish procedures;
- calculate numerical and related information to establish procedures; and
- interpret and present numerical and related information to establish procedures.

B.4.3 Core skills

(a) Information handling

Manage an established records management system to ensure integrity of the system by being able to:

- maintain existing filing arrangements;

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- ensure distribution of files and records;
- maintain security of filing system; and
- train staff.

(b) Communication

- (i) Organise and provide information to facilitate communication flow by being able to:
- receive and process a request for information;
 - identify information sources; and
 - compose reports/correspondence.
- (ii) Transcribe oral instructions by writing shorthand notes for the production of a text by being able to take dictation.

(c) Enterprise/industry

Provide advice in order to meet current and anticipated client requirements by being able to:

- identify current client requirements;
- provide information on current service provision and resource allocation within area of responsibility; and
- identify trends in client requirements.

(d) Technology

- (i) Produce complex documents, reports and work sheets using keyboard skills by being able to:
- determine presentation and format documentation;
 - produce documents; and
 - shut down equipment.
- (ii) Operate computer equipment to maintain storage media and filing system by being able to:
- maintain storage media;
 - maintain filing system;
 - shut down equipment; and
 - train others in the use of office equipment.
- (iii) Operate and maintain computer printers by being able to:
- set printers for document requirements; and
 - maintain printers.

(e) Organisational

(i) Manage appointments to achieve identified goals by being able to:

- manage a diary on behalf of another/others; and
- assist with appointment preparation and follow up.

(ii) Plan business trips and associated itinerary for management/executive to ensure effective use of time management principles by being able to:

- organise business itinerary; and
- identify credit facilities.

(iii) Plan meetings to enable the stated objectives of the meeting to be met by being able to:

- prepare documentation for meetings;
- make meeting arrangements; and
- record minutes of meetings.

(f) Team

Manage the team to ensure team goals are achieved by being able to:

- plan work for the team;
- allocate tasks to members of the team;
- monitor team performance; and
- provide training for team members.

(g) Business/financial

Produce end of period reports for cash flow projections and budgetary records by being able to:

- prepare financial reports;
- undertake and document costing procedures; and
- draft financial forecasts/budgets.

(h) Legal

An understanding and appreciation of the structures of the relevant State or Territory legal system by being able to:

- acquire and apply a limited knowledge of professional legal functions under direct supervision as a clerk by being able to interview clients, draft (for checking) documents and instructing on standard legal matters; and
- exhibit a basic understanding of different areas of law as they are dealt with, within the firm or between firms or between the firm and legal institutions for means of referral.

B.5 Level 5—Legal, clerical and administrative employee

B.5.1 Characteristics

- (a) An employee at this level may work under broad guidance. The work of others may be supervised or teams guided. Responsibility for the planning and management of the work of others may be involved.
- (b) Competency at this level involves the self-directed application of knowledge with substantial depth in some areas and a range of technical and other skills to tasks, roles and functions in both varied and highly specific contexts.
- (c) Competencies are normally used independently and both routinely and non-routinely. Judgment is required in planning and selecting appropriate equipment, services, techniques and work organisation for self and others.
- (d) An indicative training and vocational education level for this level is part achievement of Associate Diploma at TAFE or tertiary level (or equivalent).

B.5.2 Generic skills

As per Levels 1, 2, 3 and 4.

B.5.3 Core skills

As per Levels 1, 2, 3 and 4 together with the following:

(a) Information handling

Establish a records system to ensure integrity of system by being able to:

- determine the needs of the organisation;
- select appropriate system;
- implement new/improved system; and
- provide staff training.

Establish and maintain library resource collection by being able to:

- store publications;
- update incoming publications; and
- circulate publications.

(b) Communication

Initiate research and prepare information to facilitate communication flow by being able to:

- identify need for documents;
- identify need for research;
- obtain data from external sources;

- prepare drafts; and
- produce reports.

(c) Enterprise/industry

Provide advice on response to the changing environment in order to achieve organisational goals by being able to:

- analyse changes to the internal/external environment which impact on the role of the department or enterprise;
- assist with the development of options for future strategies; and
- assist with planning to match future requirements.

(d) Technology

Manage the design and development of documents, reports and work sheets by being able to:

- identify document requirements; and
- design document format.

Establish, maintain and supervise a small network by being able to:

- establish a small network;
- maintain a small network;
- assist network users;
- shut down network equipment; and
- train network users.

(e) Organisational

Plan and manage meetings to achieve identified group/section goals by being able to:

- organise meetings; and
- conduct meetings on behalf of management.

Plan and manage conferences on behalf of management to achieve identified goals by being able to:

- plan conferences;
- organise conferences;
- promote conferences; and
- co-ordinate conference proceedings.

(f) Team

Manage the team to ensure team achievements reflect identified enterprise objectives by being able to:

- clarify the link between goals of the team and goals of the enterprise;
- plan and allocate work for the team;
- monitor team performance;
- evaluate achievements of team; and
- organise training for team.

Participate in staff selection to ensure team goals are achieved by being able to:

- identify requirements for new team positions;
- draft job vacancy advertisements;
- select staff; and
- employ staff.

(g) Business/financial

Manage payroll records for employee salaries and statutory record keeping purposes by being able to:

- prepare payroll data;
- process payment of wages and salaries; and
- administer PAYG salary records.

(h) Legal

Acquire and apply a working knowledge of the structures and methods of the relevant State or Territory legal system by being able to:

- understand and participate in, under supervision, the processes of major legal institutions;
- display an understanding of areas of law and legal procedures for resolving matters referred to the employee, subject to general and procedural supervision; and
- initiate routine legal procedures and documentation.

B.6 Level 5—Law graduate

B.6.1 Characteristics

This position requires the completion of a course of study which is recognised as an academic qualification for admission and a formal offer by the employer to the law graduate, the acceptance of that offer and registration and approval of all documentation required by the relevant governing bodies.

B.7 Level 6—Law clerk

B.7.1 General

- (a) Work is under limited guidance in line with a broad plan, budget or strategy. Responsibility and defined accountability for the management and output of the work of others and for a defined function or functions may be involved.
- (b) Competency at this level involves the self-directed development of knowledge with substantial depth across a number of areas and/or mastery of a specified area with a range of skills. Application is to major functions in either varied or highly specific contexts.
- (c) Competencies are normally used independently and are substantially non-routine. Significant judgment is required in planning, design, technical or supervisory functions related to products, services, operations or processes of the firm.
- (d) Specific clerical and administrative competencies do not automatically apply at this level or above. Legal competencies continue to apply at least in conjunction with the clerical and administrative competencies.
- (e) Employees will be graded at the level where the principal functions of their employment, as determined by the employer, require the exercise of skills at the level set out in the respective grade.
- (f) An indicative training and vocational educational level for this level is Associate Diploma at TAFE or tertiary level (or equivalent).

B.7.2 Legal

The employee will be able to display a practical understanding and application of the structures, methods and procedures of the relevant State or Territory legal system.

Schedule C—Supported Wage System

[Sched C varied by [PR998748](#)]

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

C.2 In this schedule:

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

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

disability support pension means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991* (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 Education, Employment and Workplace Relations that records the employee's productive capacity and agreed wage rate

C.3 Eligibility criteria

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

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

C.4 Supported wage rates

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

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

[C.4.2 varied by [PR998748](#) ppc 01Jul10]

C.4.2 Provided that the minimum amount payable must be not less than \$73 per week.

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

C.5 Assessment of capacity

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

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

C.6 Lodgement of SWS wage assessment agreement

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

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

C.7 Review of assessment

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

C.8 Other terms and conditions of employment

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

C.9 Workplace adjustment

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

C.10 Trial period

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

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

[C.10.3 varied by [PR998748](#) ppc 01Jul10]

C.10.3 The minimum amount payable to the employee during the trial period must be no less than \$73 per week.

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

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

Schedule D—National Training Wage

[Varied by [PR998016](#)]

D.1 Title

This is the *National Training Wage Schedule*.

D.2 Definitions

In this schedule:

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

approved training means the training specified in the training contract

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

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

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

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

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

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

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

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

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

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

Tasmania: *Vocational Education and Training Act 1994*;

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

Western Australia: *Vocational Education and Training Act 1996*

trainee is an employee undertaking a traineeship under a training contract

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

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

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

year 10 includes any year before Year 10

D.3 Coverage

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

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

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

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

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

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

D.4 Types of Traineeship

The following types of traineeship are available under this schedule:

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

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

D.5 Minimum Wages

[D.5 substituted by [PR998016](#) ppc 01Jul10]

D.5.1 Minimum wages for full-time traineeships

(a) Wage Level A

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

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	per week	per week
	\$	\$	\$
School leaver	256.00	282.00	336.00
Plus 1 year out of school	282.00	336.00	391.00
Plus 2 years out of school	336.00	391.00	455.00
Plus 3 years out of school	391.00	455.00	521.00
Plus 4 years out of school	455.00	521.00	
Plus 5 or more years out of school	521.00		

(b) Wage Level B

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

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	per week	per week
	\$	\$	\$
School leaver	256.00	282.00	327.00
Plus 1 year out of school	282.00	327.00	376.00
Plus 2 years out of school	327.00	376.00	441.00
Plus 3 years out of school	376.00	441.00	503.00
Plus 4 years out of school	441.00	503.00	
Plus 5 or more years out of school	503.00		

(c) Wage Level C

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

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	per week	per week
	\$	\$	\$
School leaver	256.00	282.00	327.00
Plus 1 year out of school	282.00	327.00	368.00
Plus 2 years out of school	327.00	368.00	411.00
Plus 3 years out of school	368.00	411.00	458.00
Plus 4 years out of school	411.00	458.00	
Plus 5 or more years out of school	458.00		

(d) AQF Certificate Level IV traineeships

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

Wage level	First year of traineeship	Second and subsequent years of traineeship
	per week	per week
	\$	\$
Wage Level A	541.00	562.00
Wage Level B	522.00	542.00
Wage Level C	475.00	493.00

D.5.2 Minimum wages for part-time traineeships

(a) Wage Level A

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

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	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
School leaver	8.42	9.28	11.05
Plus 1 year out of school	9.28	11.05	12.86
Plus 2 years out of school	11.05	12.86	14.97
Plus 3 years out of school	12.86	14.97	17.14
Plus 4 years out of school	14.97	17.14	
Plus 5 or more years out of school	17.14		

(b) Wage Level B

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

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
School leaver	8.42	9.28	10.76
Plus 1 year out of school	9.28	10.76	12.37
Plus 2 years out of school	10.76	12.37	14.51
Plus 3 years out of school	12.37	14.51	16.55
Plus 4 years out of school	14.51	16.55	
Plus 5 or more years out of school	16.55		

(c) Wage Level C

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

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
School leaver	8.42	9.28	10.76
Plus 1 year out of school	9.28	10.76	12.11
Plus 2 years out of school	10.76	12.11	13.52
Plus 3 years out of school	12.11	13.52	15.07

	Highest year of schooling completed		
	Year 10 per hour	Year 11 per hour	Year 12 per hour
	\$	\$	\$
Plus 4 years out of school	13.52	15.07	
Plus 5 or more years out of school	15.07		

(d) School-based traineeships

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

Year of schooling	
Year 11 or lower per hour	Year 12 per hour
\$	\$
8.42	9.28

(e) AQF Certificate Level IV traineeships

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

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

Wage level	First year of traineeship per hour	Second and subsequent years of traineeship per hour
	\$	\$
Wage Level A	17.80	18.49
Wage Level B	17.17	17.83
Wage Level C	15.63	16.22

(f) Calculating the actual minimum wage

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

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

D.5.3 Other minimum wage provisions

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

D.5.4 Default wage rate

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

D.6 Employment conditions

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

Appendix D1: Allocation of Traineeships to Wage Levels

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

D1.1 Wage Level A

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

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

D1.2 Wage Level B

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

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

D1.3 Wage Level B

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