

Marine Tourism and Charter Vessels Award 2010

This Fair Work Commission consolidated modern award incorporates all amendments up to and including 16 November 2015 ([PR573679](#)).

Clause(s) affected by the most recent variation:

Schedule E—2015 Part-day Public Holidays

Current review matter(s): [AM2014/47](#); [AM2014/76](#); [AM2014/190](#); [AM2014/196](#); [AM2014/197](#); [AM2014/300](#); [AM2014/301](#); [AM2014/306](#); [AM2015/1](#); [AM2015/2](#)

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[Varied by [PR991602](#), [PR994460](#), [PR532631](#), [PR544519](#), [PR546288](#), [PR557581](#), [PR573679](#)]

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Part 1—Application and Operation

1. Title

This award is the *Marine Tourism and Charter Vessels Award 2010*.

2. Commencement and transitional

[Varied by [PR991602](#), [PR542213](#)]

2.1 This award commences on 1 January 2010.

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

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

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

[2.4 varied by [PR542213](#) ppc 04Dec13]

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

[2.5 varied by [PR542213](#) ppc 04Dec13]

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

[2.6 varied by [PR542213](#) ppc 04Dec13]

2.6 The Fair Work Commission may review the transitional arrangements:

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

- (d) in relation to outworker arrangements, on application by an organisation that is entitled to represent the industrial interests of one or more outworkers to whom the arrangements relate.

3. Definitions and interpretation

[Varied by [PR994460](#), [PR503726](#), [PR542213](#), [PR546078](#)]

3.1 In this award, unless the contrary intention appears:

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

[Definition of **agreement-based transitional instrument** inserted by [PR994460](#) from 01Jan10]

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 **default fund employee** inserted by [PR546078](#) ppc 01Jan14]

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

[Definition of **defined benefit member** inserted by [PR546078](#) ppc 01Jan14]

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

[Definition of **Division 2B State award** inserted by [PR503726](#) 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 [PR503726](#) 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)

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

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

engineer means a marine engineer

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

[Definition of **exempt public sector superannuation scheme** inserted by [PR546078](#) ppc 01Jan14]

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

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[Definition of **FWA** deleted by [PR542213](#) ppc 04Dec13]

marine tourism and charter vessel industry means the operation of vessels engaged on a day charter or for an overnight charter wholly or principally as a tourist, sightseeing, sailing or cruise vessel and/or as a place of or for entertainment, functions, restaurant/food and beverage purposes engaged in the provision of water orientated tourism, leisure and/or recreational activities but does not include the operation of ferries engaged in regular scheduled passenger and/or commuter transport

master means an appropriately qualified person appointed in command of a vessel

MED means Marine Engineer Driver

[Definition of **MySuper product** inserted by [PR546078](#) ppc 01Jan14]

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

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

[Definition of **on-hire** inserted by [PR994460](#) from 01Jan10]

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

Overnight Charter Employee means an employee who is engaged within the classifications in clause 13.1(a) and who is employed by a business that provides overnight accommodation for staff and paying guests

Non-overnight Charter Employee means an employee who is engaged within the classifications in clause 13.2(a) and who is employed by a business that does not provide overnight accommodation for staff and paying guests

standard rate means the minimum wage for a Coxswain (Overnight Charter Employee) in clause 13.1(a)

[Definition of **transitional minimum wage instrument** inserted by [PR994460](#) from 01Jan10]

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

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

4. Coverage

[Varied by [PR994460](#)]

4.1 This industry award covers employers throughout Australia in the Marine Tourism and Charter Vessels Industry and their employees in the classifications listed in clause 13—Minimum wages to the exclusion of any other modern award.

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

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

[New 4.4 inserted by [PR994460](#) from 01Jan10]

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

[4.5 inserted by [PR994460](#) from 01Jan10]

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

[4.6 inserted by [PR994460](#) from 01Jan10]

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

[4.4 renumbered as 4.7 by [PR994460](#) from 01Jan10]

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

NOTE: Where there is no classification for a particular employee in this award it is possible that the employer and 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 notice board 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

[Varied by [PR542213](#)]

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 varied by [PR542213](#) ppc 04Dec13]

7.2 The employer and the individual employee must have genuinely made the agreement without coercion or duress. An agreement under this clause can only be entered into after the individual employee has commenced employment with the employer.

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

[7.3(b) varied by [PR542213](#) ppc 04Dec13]

- (b) result in the employee being better off overall at the time the agreement is made than the employee would have been if no individual flexibility agreement had been agreed to.

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

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

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

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

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

7.8 The agreement may be terminated:

[7.8(a) varied by [PR542213](#) ppc 04Dec13]

- (a) by the employer or the individual employee giving 13 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.

[Note inserted by [PR542213](#) ppc 04Dec13]

Note: If any of the requirements of s.144(4), which are reflected in the requirements of this clause, are not met then the agreement may be terminated by either the employee or the employer, giving written notice of not more than 28 days (see s.145 of the *Fair Work Act 2009* (Cth)).

[New 7.9 inserted by [PR542213](#) ppc 04Dec13]

7.9 The notice provisions in clause 7.8(a) only apply to an agreement entered into from the first full pay period commencing on or after 4 December 2013. An agreement entered into before that date may be terminated in accordance with clause 7.8(a), subject to four weeks' notice of termination.

[7.9 renumbered as 7.10 by [PR542213](#) ppc 04Dec13]

7.10 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

[8—Consultation regarding major workplace change renamed and substituted by [PR546288](#) ppc 01Jan14]

8.1 Consultation regarding major workplace change

(a) Employer to notify

- (i) 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.

(ii) **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.

(b) Employer to discuss change

(i) The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 8.1(a), 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.

(ii) 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(a).

(iii) 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.

8.2 Consultation about changes to rosters or hours of work

(a) Where an employer proposes to change an employee's regular roster or ordinary hours of work, the employer must consult with the employee or employees affected and their representatives, if any, about the proposed change.

(b) The employer must:

(i) provide to the employee or employees affected and their representatives, if any, information about the proposed change (for example, information about the nature of the change to the employee's regular roster or ordinary hours of work and when that change is proposed to commence);

(ii) invite the employee or employees affected and their representatives, if any, to give their views about the impact of the proposed change (including any impact in relation to their family or caring responsibilities); and

(iii) give consideration to any views about the impact of the proposed change that are given by the employee or employees concerned and/or their representatives.

(c) The requirement to consult under this clause does not apply where an employee has irregular, sporadic or unpredictable working hours.

- (d) These provisions are to be read in conjunction with other award provisions concerning the scheduling of work and notice requirements.

9. Dispute resolution

[Varied by [PR542213](#)]

- 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 varied by [PR542213](#) ppc 04Dec13]

- 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 the Fair Work Commission.

[9.3 varied by [PR542213](#) ppc 04Dec13]

- 9.3 The parties may agree on the process to be utilised by the Fair Work Commission including mediation, conciliation and consent arbitration.

[9.4 varied by [PR542213](#) ppc 04Dec13]

- 9.4 Where the matter in dispute remains unresolved, the Fair Work Commission 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 Full-time employment

Any employee not specifically engaged as being a part-time or casual employee is for all purposes of this award a full-time employee, unless otherwise specified in this award.

10.2 Part-time employment

- (a) An Overnight Charter Employee or Non-overnight Charter Employee may be engaged to work on a part-time basis involving a regular pattern of hours which averages less than 38 ordinary hours per week.
- (b) A part-time employee must be engaged for a minimum of two consecutive hours a day. In order to meet their personal circumstances, a part-time employee may request and the employer may agree to an engagement for less than the minimum of two hours.
- (c) All terms of this award will apply pro rata to part-time employees.

10.3 Casual employment

- (a) An Overnight Charter Employee or Non-overnight Charter Employee may be engaged to work on a casual basis. A casual employee:
 - (i) is engaged to work a variety of hours if they are a Non-overnight Charter Employee or a specified trip or trips if they are an Overnight Charter Employee at the direction of the employer;
 - (ii) if they are an Overnight Charter Employee, must be engaged for a minimum of one half day trip as per clause 20.3, or if they are a Non-overnight Charter Employee must be engaged for a minimum of two hours per shift and a maximum of 12 hours per shift;
 - (iii) cannot be engaged for more than 38 hours per week if they are a Non-overnight Charter Employee; and
 - (iv) must be paid the applicable loading as defined in clause 13—Minimum wages.
- (b) For the purposes of providing potential casual employees with the written notice as stipulated in clause 10.4, the employer must also specify the likely time periods or trips the employee will be required to work.

10.4 Notice to be provided to all employees

- (a) Upon making an offer of employment to a potential employee, the employer must provide a written notice to the person to whom the offer of employment is addressed stating:
 - (i) whether the person is to be engaged as an Overnight Charter Employee or a Non-overnight Charter Employee;
 - (ii) whether the person is to be engaged on a full-time, part-time or casual basis; and
 - (iii) the classification level and rate of pay the employee will receive.
- (b) The engagement of an employee as described in the written notice provided pursuant to clause 10.4(a) can only be varied by mutual agreement between the employer and employee, documented in writing.

11. Termination of employment

11.1 Notice of termination by an employer

The notice of termination of employment required to be given by the employer 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

12.1 Redundancy pay

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) In circumstances of redundancy, this entitlement applies instead of clause 11.3.

Part 4—Minimum Wages and Related Matters

13. Minimum wages

[Varied by [PR997967](#), [PR509124](#), [PR522955](#), [PR536758](#), [PR551681](#), [PR566772](#)]

13.1 Adult employee minimum wages

(a) Overnight Charter Employees

The classifications and minimum wages for full-time and part-time adult Overnight Charter Employees are set out in the following table:

[13.1(a) varied by [PR997967](#), [PR509124](#), [PR522955](#), [PR536758](#), [PR551681](#), [PR566772](#) ppc 01Jul15]

Classification	Daily rate \$
Crew Level 1	141.41
Crew Level 2	150.05
Crew Level 3	156.72
Dive Master/Dive Instructor	156.72
Coxswain	169.29
Master V	215.23
Master IV	241.39

- (b) The wage rates set above have been calculated to include compensation for weekend and public holiday penalties.
- (c) An Overnight Charter Employee employed on a casual basis will be paid at the rate of the daily rate plus 25% for all work performed within the ordinary hours of work prescribed by clause 20—Ordinary hours of work and rostering.

13.2 Non-overnight Charter Employees

- (a) The classifications and minimum wages for full-time and part-time adult Non-overnight Charter Employees are set out in the following table:

[13.2(a) varied by [PR997967](#), [PR509124](#), [PR522955](#), [PR536758](#), [PR551681](#), [PR566772](#) ppc 01Jul15]

Classification	Weekly rate \$
Crew Level 1	658.10

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Classification	Weekly rate
	\$
Crew Level 2	723.90
Coxswain	788.30
Engineer MED III	792.00
Master V	792.00
Engineer MED II	806.40
Master IV	806.40
Engineer MED I	886.60

- (b) A Non-overnight Charter Employee engaged on a casual basis will be paid at the rate of ordinary time plus 25% for all work performed within the ordinary hours of work prescribed by clause 20.

13.3 Junior rates

(a) Junior Crew Levels 1, 2 and 3

The minimum rates of pay of junior Crew Hands will be the following percentages of the rates of pay prescribed in clauses 13.1(a) and 13.2(a) for Crew Levels 1, 2 and 3:

Years of age	Percentages
	%
At 16 years of age	50
At 17 years of age	60
At 18 years of age	75
At 19 years of age	90

Such percentages will be calculated to the nearest \$0.05, any broken part of \$0.05 in the result not exceeding half of \$0.05 being disregarded.

- (b) An employee under 20 years of age who holds a Master's Certificate and is employed to perform the duties of a master will be paid the appropriate rate of pay for a master prescribed by clauses 13.1(a) and 13.2(a).

13.4 Supported wage system

See Schedule C

13.5 National training wage

See Schedule D

14. Allowances for crew on all vessels

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

[Varied by [PR998114](#), [PR509245](#), [PR523075](#), [PR536878](#), [PR551801](#), [PR566902](#)]

14.1 Meals and living away from home

- (a) Whilst on an overnight charter every Overnight Charter Employee will be provided with:
- (i) proper meals;
 - (ii) a bed; and
 - (iii) clean linen once a week, for which the employer will be responsible for the laundering.
- (b) Meals, tea, sugar, milk and coffee will be provided on all vessels for all employees under this award at the employer's expense.

14.2 Meals on overtime

[14.2 varied by [PR998114](#), [PR509245](#), [PR523075](#), [PR536878](#), [PR551801](#), [PR566902](#) ppc 01Jul15]

When an employee, including a casual, is required to work overtime in excess of one and a half hours before or after the usual commencing time, the employee will be provided free of cost with a suitable meal and will be provided with a further suitable meal every four hours thereafter while overtime continues or be paid instead the amount of \$11.76.

14.3 Uniform allowance

Where employees are required to wear uniforms, these will be provided by the employer at no cost to the employee or, instead, the employer will pay to the employee \$12.37 per week.

14.4 Compensation for personal effects

[14.4 varied by [PR998114](#), [PR509245](#), [PR523075](#), [PR536878](#), [PR551801](#), [PR566902](#) ppc 01Jul15]

If, by fire, explosion, foundering, shipwreck, collision, stranding or any other cause whatsoever not attributable to the employee's neglect, an employee should sustain damage to or loss of their personal effects or equipment, such equipment being necessary for the performance of their duties, the employer will compensate the employee for such damage or loss by cash payment equivalent to the value thereof to a maximum of \$1126.00, provided that this amount or any part thereof will not be payable where loss is recovered through workers compensation insurance.

14.5 MED certificate

Excluding any employee employed as a MED, employees required to hold a MED certificate are to be paid a daily allowance for the duration of each voyage, charter or tour as follows:

Certificate	Daily allowance % of the <u>standard rate</u>
MED II	15.74
MED III	7.87

14.6 Outer reef work

Where the itinerary requires outer reef work, a master is to be paid a daily outer reef allowance of 7.87% of the standard rate for the duration of the voyage, charter or tour.

14.7 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
Compensation for personal effects	All groups

15. District allowances

[Varied by [PR994460](#); deleted by [PR561478](#) ppc 05Mar15]

16. Accident pay

[Varied by [PR994460](#), [PR503726](#); deleted by [PR561478](#) ppc 05Mar15]

17. Higher duties

- 17.1** An employee who is required to do work for which a higher rate is fixed than that provided for their ordinary duties will, if such work exceeds a total of four hours on any day, be paid for all work done on such day at the higher rate.
- 17.2** If such work does not exceed four hours on any day the employee will be paid the higher rate for the actual time worked.

18. Payment of wages

- 18.1** Wages will be paid either weekly or fortnightly. Payment will be made to the employee no later than Thursday in each pay cycle.
- 18.2** The employer may elect to pay wages either in cash or by electronic funds transfer into an account nominated by the employee with a bank or other financial institution. Provided that the employer and an employee may agree that wages be paid in cash.
- 18.3** Where a public holiday falls on the normal pay day or the day following the normal pay day, the wages will be paid on the ordinary working day preceding the normal pay day, or on another day if agreed between the employer and an employee.

19. Superannuation

[Varied by [PR994460](#), [PR546078](#)]

19.1 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.

19.2 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.

19.3 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 19.2.
- (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 19.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 19.3(a) or (b) was made.

19.4 Superannuation fund

[19.4 varied by [PR994460](#) from 01Jan10]

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 19.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 19.2 and pay the amount authorised under clauses 19.3(a) or (b) to one of the following superannuation funds or its successor:

- (a) Sunsuper;
- (b) REST Superannuation;

[19.4(c) varied by [PR546078](#) ppc 01Jan14]

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

[19.4(d) inserted by [PR546078](#) ppc 01Jan14]

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

19.5 Absence from work

Subject to the governing rules of the relevant superannuation fund, the employer must also make the superannuation contributions provided for in clause 19.2 and pay the amount authorised under clauses 19.3(a) or (b):

- (a) **Paid leave**—while the employee is on any paid leave;
- (b) **Work-related injury or illness**—for the period of absence from work (subject to a maximum of 52 weeks) of the employee due to work-related injury or work-related illness provided that:
 - (i) the employee is receiving workers compensation payments or is receiving regular payments directly from the employer in accordance with the statutory requirements; and
 - (ii) the employee remains employed by the employer.

Part 5—Hours of Work and Related Matters

20. Ordinary hours of work and rostering

[Varied by [PR994460](#)]

- 20.1 Maximum weekly hours and requests for flexible working arrangements are provided for in the NES.

20.2 Ordinary hours of work—Non-overnight Charter Employees

For Non-overnight Charter Employees the ordinary hours:

- (a) must not exceed 38 hours per week averaged over a period of 12 months;
- (b) must be a minimum of two hours and a maximum of 12 hours on any one day within the spread of hours prescribed in clause 20.2(c); and

[20.2(c) varied by [PR994460](#) from 01Jan10]

- (c) may be worked on any day of the week Monday to Saturday between the hours of 6.00 am and 2.00 am the next day or during any other six day period in any week mutually agreed upon between an employer and an employee and of which period the employer has given at least 14 days' written notice to the employee.

20.3 Ordinary hours of work—Overnight Charter Employees

For Overnight Charter Employees the ordinary hours:

- (a) must not exceed 38 hours per week averaged over a period of 12 months;
- (b) must not exceed 20 days in any 28 day roster cycle; or
- (c) must not exceed a maximum of 12 ordinary hours on any one day.

20.4 Charters will be paid at the following percentage of the daily rate:

Charter length	% of daily rate
Half day charter *	50
Day charter **	100
1 day/1 night	150
2 days/1 night	200
2 days/2 nights	250
3 days/2 nights	300
3 days/3 nights	350
4 days/3 nights	400
4 days/4 nights	450

* Half day charter: No nights, with a duration of up to four hours

** Day charter: No nights, with a duration of more than four hours

This classifying system continues for all longer trips following the same pattern, and recognises that back to back departures are calculated as a single charter.

20.5 Breaks between shifts

- (a) Employees must not be rostered to work within 10 hours of the cessation of their previous rostered charter or trip.
- (b) Should an employee be rostered to work so that such employee will not have at least 10 consecutive hours off between rostered duty times then the employee must, subject to clause 20.5(c), be released from work until the employee has had 10 consecutive hours off between rostered duty times.
- (c) If, on the instructions of the employer, such employee resumes or continues work without having had 10 consecutive hours off between rostered periods of duty, the employee will be paid double rates until the employee is released from rostered duty at which stage the employee will be entitled to be absent until the employee has had 10 consecutive hours off rostered duty without loss of pay for ordinary working time occurring during such absence.
- (d) Provided that for the purpose of clause 20.5, eight hours will be substituted for 10 hours where there is a changeover of rosters or where the employee and employer mutually agree in writing to do so.

20.6 Notice to employees regarding employment of more than seven consecutive days

Where an employee is to be in employment for more than seven consecutive days, an employer will give as much notice as is reasonably practicable to an employee of the times during which they are to work on days other than their rest days.

20.7 Rest day

- (a) At the commencement of employment or as soon as practicable thereafter, an employer will inform each employee of the days on which the employee will be required to work and which days are to be rest days. Days may be altered by agreement or by the employer giving at least 14 days' written notice to the employee.
- (b) All time worked by an employee on a rest day will be overtime and must be paid for a minimum of four hours.

20.8 Make-up time

- (a) 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, at the ordinary rate of pay.
- (b) An employee on shiftwork may elect, with the consent of the employer, to work make-up time at the shiftwork rate which would have been applicable to the hours taken off.

21. Breaks

21.1 Meal breaks

- (a) All employees will be allowed time for unpaid meal breaks during the course of their working day provided that the time allowed for such meal must be not less than half an hour.
- (b) The actual time for a meal will be by agreement between the employee and the employer concerned appropriate to the operational requirements of the particular vessel.

21.2 Rest pauses

Each employee is entitled to a 10 minute rest pause during the morning and afternoon without loss of pay, to be taken at a time mutually agreed between the employer and the employee.

22. Overtime and penalty rates

22.1 Non-overnight Charter Employees

All time worked by Non-overnight Charter Employees (other than casual employees) in excess of:

- 12 hours per day; or
- the average ordinary hours per week as per clause 20.2(a),

is overtime and must be paid at one and a half times the employee's ordinary rate for the first two hours and double time thereafter calculated hourly.

22.2 Overnight Charter Employees

All time worked by Overnight Charter Employees in excess of:

- 12 hours per day;
- 20 days in a 28 day cycle, or
- the average ordinary hours as per clause 20.3(a) ,

is overtime and must be paid at one and a half times the employee's ordinary rate for the first two hours and double the ordinary rate thereafter calculated hourly.

Part 6—Leave and Public Holidays

23. Annual leave

23.1 Annual leave is provided for in the NES.

23.2 Conversion to hourly entitlement

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

23.3 Payment of annual leave

The terms of the NES prescribe the basis for payment for annual leave, including payment for untaken leave upon the termination of employment. In addition to the terms of the NES, an employer is required to pay an additional leave loading of 17.5% calculated on an employee's ordinary time rate of pay.

23.4 Excessive leave

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

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

23.5 Paid leave in advance of accrued entitlement

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

23.6 Payment of additional leave loading on termination

On termination of employment, an employee entitled to payment in place of annual leave must be paid pro rata the loading provided for in clause 23.3.

24. Personal/carer's leave and compassionate leave

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

25. Community service leave

Community service leave is provided for in the NES.

26. Public holidays

26.1 Public holidays are provided for in the NES.

26.2 Overnight Charter Employees

For the avoidance of doubt, Overnight Charter Employees are not entitled to the payment of loading for work performed on public holidays in accordance with clause 26.3.

26.3 Non-overnight Charter Employees

(a) Christmas Day

Non-overnight Charter Employees who required to work on Christmas Day will be paid triple time for a minimum of four hours.

(b) Public holidays other than Christmas Day

Non-overnight Charter Employees who are required to work on public holidays, other than Christmas Day (in respect of which the provisions this clause apply) will be paid ordinary time and have an extra day added to their annual leave entitlement or, alternatively, be paid double time for such work.

(c) Where the part-time employee's normal rostered hours fall on a public holiday prescribed in the NES and work is not performed by the employee, such employee must not lose pay for the day.

Schedule A—Transitional Provisions

[Varied by [PR991602](#), [PR503726](#)]

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 [PR503726](#) ppc 01Jan11]

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

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

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

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

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

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

Schedule B—Classification Structure and Definitions

[Varied by [PR991602](#), [PR994460](#), [PR544015](#), [PR544373](#), [PR546131](#)]

B.1 Application of this schedule

The classification structure and definitions set out in clause B.2 apply to employees covered by this award, except where otherwise specified.

B.2 Classification structure

B.2.1 Crew Level 1

- (a) This wage level is for the first three months of employment (probationary period). During this timeframe the five day Introduction Deckhand Course may be completed by the new employee.

[B.2.1(b) varied by [PR994460](#) from 01Jan10]

- (b) Duties include but are not limited to:

- the service, hospitality and entertainment of passengers;
- the preparation of the vessel for departure/s;
- the setting, trimming, and striking of sails as required;
- the stocking and dispensing of liquor under direction of licensee;
- the preparation of meals;
- the ordering of stores; and
- the performance of duties as required by the immediate supervisor, Coxswain or Master.

- (c) Qualification training is not mandatory.

B.2.2 Crew Level 2

[B.2.2 substituted by [PR544015](#); corrected by [PR544373](#); substituted by [PR546131](#) ppc 19Dec13]

- (a) After completing the first three months of employment (probationary period) and upon the completion of the Introduction Deckhand Course or relevant experience/qualifications as determined by the employer, the employees' wage level will rise to that of the Crew Level 2 wage.
- (b) Duties include all those of a Crew Level 1 employee, usually to a higher level of competence than a Crew Level 1 employee.

B.2.3 Crew Level 3

- (a) A qualified crew member who obtains the qualification of Coxswain Ticket enabling the employee to drive a tender within two nautical miles of the mothership.

- (b) Duties include all those of Crew Levels 1 and 2, usually to a higher level of competence than a Crew Level 1 or 2 employee.

B.2.4 Dive Master/Diver Instructor

An employee at this level will perform all diving duties as required, including:

- instructing and supervising diving operations;
- ensuring adherence to all legislative and regulatory requirements;
- preparing vessels for departure and setting, trimming and striking sails as required;
- stocking and dispensing liquor under supervision of the licensee;
- preparation of meals;
- ordering of stores; and
- the performance of duties related to the operation of the vessel as required by the immediate supervisor, Coxswain or Master.

B.2.5 Coxswain

An employee at this level will:

- navigate vessel of class coxswain status;
- ensure the safe operation of the vessel;
- supervise the crew and entertain passengers; and
- perform routine and preventative maintenance as required.

B.2.6 Engineer MED III

An employee at this level will:

- engineer a vessel requiring a MED III certificate;
- ensure the proficient operation of the vessel plant and equipment; and
- perform routine and preventative maintenance as required.

B.2.7 Master V

An employee at this level will:

- navigate a vessel of class V status;
- ensure the safe operation of the vessel;
- supervise the crew and entertain passengers; and
- perform routine and preventative maintenance as required.

B.2.8 Engineer MED II

An employee at this level will:

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- engineer a vessel requiring a MED II certificate;
- ensure the proficient operation of the vessel plant and equipment; and
- perform routine and preventative maintenance as required.

B.2.9 Master IV

An employee at this level will:

- Navigate a vessel of class IV status;
- ensure the safe operation of the vessel;
- supervise the crew and entertain passengers; and
- perform routine and preventative maintenance as required.

B.2.10 Engineer MED I

An employee at this level will:

- engineer a vessel requiring a MED I certificate;
- ensure the proficient operation of the vessel plant and equipment; and
- perform routine and preventative maintenance as required.

Schedule C—Supported Wage System

[Varied by [PR991602](#), [PR994460](#), [PR998748](#), [PR510670](#), [PR525068](#), [PR537893](#), [PR542213](#), [PR551831](#), [PR568050](#)]

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

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

C.2 In this schedule:

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

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

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

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

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

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

C.3 Eligibility criteria

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

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

C.4 Supported wage rates

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

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

[C.4.2 varied by [PR994460](#), [PR998748](#), [PR510670](#), [PR525068](#), [PR537893](#), [PR551831](#), [PR568050](#) ppc 01Jul15]

C.4.2 Provided that the minimum amount payable must be not less than \$81 per week.

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

C.5 Assessment of capacity

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

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

C.6 Lodgement of SWS wage assessment agreement

[C.6.1 varied by [PR542213](#) ppc 04Dec13]

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

[C.6.2 substituted by [PR994460](#) from 01Jan10; varied by [PR542213](#) ppc 04Dec13]

C.6.2 All SWS wage assessment agreements must be agreed and signed by the employee and employer parties to the assessment. Where a union which has an interest in the

award is not a party to the assessment, the assessment will be referred by the Fair Work Commission to the union by certified mail and the agreement will take effect unless an objection is notified to the Fair Work Commission within 10 working days.

C.7 Review of assessment

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

C.8 Other terms and conditions of employment

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

C.9 Workplace adjustment

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

C.10 Trial period

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

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

[C.10.3 varied by [PR994460](#), [PR998748](#), [PR510670](#), [PR525068](#), [PR537893](#), [PR551831](#), [PR568050](#) ppc 01Jul15]

C.10.3 The minimum amount payable to the employee during the trial period must be no less than \$81 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 [PR991602](#); substituted by [PR994460](#) ppc 01Jan10; varied by [PR994460](#), [PR997967](#), [PR509124](#), [PR522955](#), [PR536758](#), [PR545787](#), [PR551681](#), [PR566772](#)]

D.1 Title

This is the *National Training Wage Schedule*.

D.2 Definitions

In this schedule:

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

approved training means the training specified in the training contract

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

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

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

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

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

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

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

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

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

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

Tasmania: *Vocational Education and Training Act 1994*;

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

Western Australia: *Vocational Education and Training Act 1996*

trainee is an employee undertaking a traineeship under a training contract

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

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

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

year 10 includes any year before Year 10

D.3 Coverage

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

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

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

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

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

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

D.4 Types of Traineeship

The following types of traineeship are available under this schedule:

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

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

D.5 Minimum Wages

[D.5 substituted by [PR997967](#), [PR509124](#), [PR522955](#), [PR536758](#), [PR551681](#), [PR566772](#) ppc 01Jul15]

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 per week \$	Year 11 per week \$	Year 12 per week \$
School leaver	295.10	325.00	387.20
Plus 1 year out of school	325.00	387.20	450.60
Plus 2 years out of school	387.20	450.60	524.40
Plus 3 years out of school	450.60	524.40	600.40
Plus 4 years out of school	524.40	600.40	
Plus 5 or more years out of school	600.40		

(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 per week \$	Year 11 Per week \$	Year 12 per week \$
School leaver	295.10	325.00	376.80
Plus 1 year out of school	325.00	376.80	433.40
Plus 2 years out of school	376.80	433.40	508.20
Plus 3 years out of school	433.40	508.20	579.70
Plus 4 years out of school	508.20	579.70	
Plus 5 or more years out of school	579.70		

(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	295.10	325.00	376.80
Plus 1 year out of school	325.00	376.80	424.10
Plus 2 years out of school	376.80	424.10	473.80
Plus 3 years out of school	424.10	473.80	527.90
Plus 4 years out of school	473.80	527.90	
Plus 5 or more years out of school	527.90		

(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	Second and
	traineeship	subsequent years of
	per week	traineeship
	\$	\$
Wage Level A	623.50	647.70
Wage Level B	601.60	624.70
Wage Level C	547.50	568.20

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:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
School leaver	9.71	10.70	12.74
Plus 1 year out of school	10.70	12.74	14.83

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	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
Plus 2 years out of school	12.74	14.83	17.25
Plus 3 years out of school	14.83	17.25	19.74
Plus 4 years out of school	17.25	19.74	
Plus 5 or more years out of school	19.74		

(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	9.71	10.70	12.40
Plus 1 year out of school	10.70	12.40	14.26
Plus 2 years out of school	12.40	14.26	16.73
Plus 3 years out of school	14.26	16.73	19.08
Plus 4 years out of school	16.73	19.08	
Plus 5 or more years out of school	19.08		

(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	9.71	10.70	12.40
Plus 1 year out of school	10.70	12.40	13.95
Plus 2 years out of school	12.40	13.95	15.58
Plus 3 years out of school	13.95	15.58	17.36
Plus 4 years out of school	15.58	17.36	
Plus 5 or more years out of school	17.36		

(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	Year 12
per hour	per hour
\$	\$
9.71	10.70

(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	Second and subsequent years of traineeship
	per hour	per hour
	\$	\$
Wage Level A	20.51	21.31
Wage Level B	19.77	20.54
Wage Level C	18.01	18.70

(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

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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.

[Note inserted by [PR545787](#) ppc 01Jan14]

Note: The time to be included for the purpose of calculating the wages for part-time trainees whose approved training is fully off-the-job is determined by clause D.5.2(f)(ii) and not by this clause.

- D.6.4 Subject to clause D.3.5 of this schedule, all other terms and conditions of this award apply to a trainee unless specifically varied by this schedule.

Appendix D1: Allocation of Traineeships to Wage Levels

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

D1.1 Wage Level A

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

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

D1.2 Wage Level B

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

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

D1.3 Wage Level C

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

Schedule E—2015 Part-day Public Holidays

[Sched E inserted by [PR532631](#) ppc 23Nov12; renamed and varied by [PR544519](#) ppc 21Nov13; renamed and varied by [PR557581](#), [PR573679](#) ppc 16Nov15]

This schedule operates in conjunction with award provisions dealing with public holidays.

- E.1** Where a part-day public holiday is declared or prescribed between 7.00 pm and midnight on Christmas Eve (24 December 2015) or New Year's Eve (31 December 2015) the following will apply on Christmas Eve and New Year's Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:
- (a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the NES.
 - (b) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of exercising their right under the NES does not work, they will be paid their ordinary rate of pay for such hours not worked.
 - (c) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of being on annual leave does not work, they will be taken not to be on annual leave between those hours of 7.00 pm and midnight that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.
 - (d) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.
 - (e) Excluding annualised salaried employees to whom clause E.1(f) applies, where an employee works any hours between 7.00 pm and midnight they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.
 - (f) Where an employee is paid an annualised salary under the provisions of this award and is entitled under this award to time off in lieu or additional annual leave for work on a public holiday, they will be entitled to time off in lieu or pro-rata annual leave equivalent to the time worked between 7.00 pm and midnight.
 - (g) An employee not rostered to work between 7.00 pm and midnight, other than an employee who has exercised their right in accordance with clause E.1(a), will not be entitled to another day off, another day's pay or another day of annual leave as a result of the part-day public holiday.

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- (h)** Nothing in this schedule affects the right of an employee and employer to agree to substitute public holidays.

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

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