

The Ports, Harbours and Enclosed Water Vessels Award—Exposure Draft was first published on 15 January 2016. Subsequent amendments to the draft are as follows:

Publication date	Reason for amendments	Clauses affected
25 January 2016	Correct errors in casual rates	A.3.1
	Exposure Draft	
7 November 2016	Incorporate changes resulting from PR580863	Schedule F
	Incorporate changes resulting from [2016] FWCFB 3500 , PR579822 and PR579556	9, 10, Schedule A, Schedule B
	Incorporate changes resulting from PR585481	5.2, 12, Schedule C
	Incorporate changes agreed to by parties and changes made by AMOD following conference of 4 August 2016	8, 9.2, 10.1(d), 10.1(e) [deleted], 10.1(f) [deleted], 10.1(h) [deleted], 10.1(k), 10.2(d), 10.2(j)(ii), 10.2(k), 10.2(g)(iii), 10.2(j)(ii), Schedule B
	Exposure Draft	
18 July 2017	Incorporate changes resulting from PR588737	5.2, 14.4, 14.5, 14.6, 14.7, 14.8, Schedule D, Schedule E
	Note added	Schedule A
	Incorporate changes resulting from [2017] FWCFB 3500 , PR592150 , PR592312	9, 10, Schedule A, Schedule B
	Incorporate changes resulting from [2017] FWCFB 3541	6
	Incorporate changes resulting from [2017] FWCFB 3433	1, 3, Schedule A, Schedule B, Schedule G
	Exposure Draft	
08 March 2019	Incorporate changes resulting from PR598110	Schedule F
	Incorporate changes resulting from PR598705 , [2018] FWCFB 646	3.7, 3.8, 3.9, Schedule G
	Incorporates changes resulting from [2018] FWCFB 3500 , PR606337 , PR606532	9, 10, Schedule A, Schedule B
	Incorporate changes resulting from [2018] FWCFB 1405	6.4(h), 6.5, 6.5(b)(i), 8, 9.2, 13.2
	Incorporates changes resulting from [2018] FWCFB 3936 , PR609370	19
	Incorporates changes resulting from [2018] FWCFB 4695 , PR700598	6.6

The Ports, Harbours and Enclosed Water Vessels Award—Exposure Draft was first published on 15 January 2016. Subsequent amendments to the draft are as follows:		
Publication date	Reason for amendments	Clauses affected
	Incorporates changes resulting from PR701683	
	Incorporates changes resulting from [2018] FWCFB 6863 , PR701454	4A
	Incorporates changes resulting from [2018] FWCFB 4704 , PR610215	4, 20, 22, 22A, 23
	Incorporates changes resulting from [2018] FWCFB 6368 , [2018] FWCFB 7145	7.2, 12.2, 13.2 (all still outstanding)
	Administrative changes by the Modern Awards team	9.2 (deleted), 9A
	Incorporates changes resulting from [2018] FWCFB 4735 , PR610078	9A

A text box indicates that the Exposure Draft has been amended.

Changes agreed to by parties appear in red text.

Underlined text indicates new text that is to be included as a result of a technical and drafting decision.

Strikethrough text indicates existing text that is to be deleted as a result of a technical and drafting decision.

Changes resulting from a determination are incorporated without any underlined text or strikethrough text.

EXPOSURE DRAFT

Ports, Harbours and Enclosed Water Vessels Award 20XX

This exposure draft has been prepared by staff of the Fair Work Commission based on the *Ports, Harbours and Enclosed Water Vessels Award 2010* (the Ports award) as at 7 November 2016. This exposure draft does not seek to amend any entitlements under the Ports award but has been prepared to address some of the structural issues identified in modern awards.

The review of this award in accordance with s.156 of the *Fair Work Act 2009* is being dealt with in matter [AM2014/241](#). Additionally a number of common issues are being dealt with by the Commission which may affect this award. Transitional provisions have not been included in this exposure draft pending the outcome of the review.

This draft does not represent the concluded view of the Commission in this matter.

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DRAFT

Part 1—Application and Operation

1. Title and commencement

- 1.1 This award is the *Ports, Harbours and Enclosed Water Vessels Award 20XX*.
- 1.2 This modern award commenced operation on 1 January 2010. The terms of the award have been varied since that date.
- 1.3 A variation to this award does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the award as it existed prior to that variation.
- 1.4 Schedule G—Definitions sets out definitions that apply in this award.
- 1.5 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. The National Employment Standards and this award

- 2.1 The [National Employment Standards](#) (NES) and this award contain the minimum conditions of employment for employees covered by this award.
- 2.2 Where this award refers to a condition of employment provided for in the [NES](#), the [NES](#) definition applies.
- 2.3 The employer must ensure that copies of the 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 accessible electronic means.

3. Coverage

Coverage to be determined by [AM2016/5](#).

Specific wording of clause 3.2 will be addressed after the Full Bench has determined the coverage issues in [AM2016/5](#). See [2017 FWCFB 3433](#) at [305]

- 3.1 This industry award covers employers throughout Australia in the ports, harbours and enclosed water vessels industry and their employees in the classifications listed in clause 9 to the exclusion of any other modern award.
- 3.2 For the purpose of clause 3.1, **ports, harbours and enclosed water vessels industry** means the operation of vessels of any type wholly or substantially within a port,

harbour or other body of water within the Australian coastline or at sea on activities not covered by the above awards.

3.3 The award does not cover employers and employees wholly or substantially covered by the following awards:

- (a) the *Dredging Industry Award 20XX*;
- (b) the *Maritime Offshore Oil and Gas Award 20XX*;
- (c) the *Marine Tourism and Charter Vessels Award 20XX*;
- (d) the *Marine Towage Award 20XX*;
- (e) the *Port Authorities Award 20XX*;
- (f) the *Seagoing Industry Award 20XX*; and
- (g) the *Stevedoring Industry Award 20XX*.

3.4 The award does not cover maintenance contractors covered by the following awards:

- (a) the *Manufacturing and Associated Industries and Occupations Award 20XX*; or
- (b) the *Electrical, Electronic and Communications Contracting Award 20XX*.

3.5 The award does not cover employees of a local government covered by another award.

3.6 This award does not cover:

- (a) employees excluded from award coverage by the [Act](#);
- (b) 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; or
- (c) 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.

Clause 3.7 inserted in accordance with [PR598705](#).

3.7 This award does not cover employees in the wild catch fishing industry (as defined in Schedule H of this award).

3.8 ~~3.7~~ This award covers any employer which supplies labour on an on-hire basis in the industry set out in clause 3.1 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.

3.9 ~~3.8~~ 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.

4. Individual flexibility arrangements

Clause 4 substituted in accordance with [PR610215](#).

- 4.1** Despite anything else in this award, an employer and an individual employee may agree to vary the application of the terms of this award relating to any of the following in order to meet the genuine needs of both the employee and the employer:
- (a) arrangements for when work is performed; or
 - (b) overtime rates; or
 - (c) penalty rates; or
 - (d) allowances; or
 - (e) annual leave loading.
- 4.2** An agreement must be one that is genuinely made by the employer and the individual employee without coercion or duress.
- 4.3** An agreement may only be made after the individual employee has commenced employment with the employer.
- 4.4** An employer who wishes to initiate the making of an agreement must:
- (a) give the employee a written proposal; and
 - (b) if the employer is aware that the employee has, or reasonably should be aware that the employee may have, limited understanding of written English, take reasonable steps (including providing a translation in an appropriate language) to ensure that the employee understands the proposal.
- 4.5** An agreement must result in the employee being better off overall at the time the agreement is made than if the agreement had not been made.
- 4.6** An agreement must do all of the following:
- (a) state the names of the employer and the employee; and
 - (b) identify the award term, or award terms, the application of which is to be varied; and
 - (c) set out how the application of the award term, or each award term, is varied; and

- (d) set out how the agreement results in the employee being better off overall at the time the agreement is made than if the agreement had not been made; and
- (e) state the date the agreement is to start.

4.7 An agreement must be:

- (a) in writing; and
- (b) signed by the employer and the employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

4.8 Except as provided in clause 4.7(b), an agreement must not require the approval or consent of a person other than the employer and the employee.

4.9 The employer must keep the agreement as a time and wages record and give a copy to the employee.

4.10 The employer and the employee must genuinely agree, without duress or coercion to any variation of an award provided for by an agreement.

4.11 An agreement may be terminated:

- (a) at any time, by written agreement between the employer and the employee; or
- (b) by the employer or employee giving 13 weeks' written notice to the other party (reduced to 4 weeks if the agreement was entered into before the first full pay period starting on or after 4 December 2013).

Note: If an employer and employee agree to an arrangement that purports to be an individual flexibility arrangement under this award term and the arrangement does not meet a requirement set out in s.144 then the employee or the employer may terminate the arrangement by giving written notice of not more than 28 days (see s.145 of the [Act](#)).

4.12 An agreement terminated as mentioned in clause 4.11(b) ceases to have effect at the end of the period of notice required under that clause.

4.13 The right to make an agreement under clause 4 is additional to, and does not affect, any other term of this award that provides for an agreement between an employer and an individual employee.

4A. Requests for flexible working arrangements

Clause 4A inserted in accordance with [PR701454](#).

4A.1 Employee may request change in working arrangements

Clause 4A applies where an employee has made a request for a change in working arrangements under s.65 of the [Act](#).

Note 1: Section 65 of the [Act](#) provides for certain employees to request a change in their working arrangements because of their circumstances, as set out in s.65(1A).

Note 2: An employer may only refuse a s.65 request for a change in working arrangements on ‘reasonable business grounds’ (see s.65(5) and (5A)).

Note 3: Clause 4A is an addition to s.65.

4A.2 Responding to the request

Before responding to a request made under s.65, the employer must discuss the request with the employee and genuinely try to reach agreement on a change in working arrangements that will reasonably accommodate the employee’s circumstances having regard to:

- (a) the needs of the employee arising from their circumstances;
- (b) the consequences for the employee if changes in working arrangements are not made; and
- (c) any reasonable business grounds for refusing the request.

Note 1: The employer must give the employee a written response to an employee’s s.65 request within 21 days, stating whether the employer grants or refuses the request (s.65(4)).

Note 2: If the employer refuses the request, the written response must include details of the reasons for the refusal (s.65(6)).

4A.3 What the written response must include if the employer refuses the request

Clause 4A.3 applies if the employer refuses the request and has not reached an agreement with the employee under clause 4A.2.

- (a) The written response under s.65(4) must include details of the reasons for the refusal, including the business ground or grounds for the refusal and how the ground or grounds apply.
- (b) If the employer and employee could not agree on a change in working arrangements under clause 4A.2, the written response under s.65(4) must:
 - (i) state whether or not there are any changes in working arrangements that the employer can offer the employee so as to better accommodate the employee’s circumstances; and
 - (ii) if the employer can offer the employee such changes in working arrangements, set out those changes in working arrangements.

4A.4 What the written response must include if a different change in working arrangements is agreed

If the employer and the employee reached an agreement under clause 4A.2 on a change in working arrangements that differs from that initially requested by the employee, the employer must provide the employee with a written response to their request setting out the agreed change(s) in working arrangements.

4A.5 Dispute resolution

Disputes about whether the employer has discussed the request with the employee and responded to the request in the way required by clause 4A, can be dealt with under clause 23—Dispute resolution.

5. Facilitative provisions

5.1 A facilitative provision provides that the standard approach in an award provision may be departed from by agreement between an employer and an individual employee, or an employer and the majority of employees in the enterprise or part of the enterprise concerned.

5.2 Facilitative provisions in this award are contained in the following clauses:

Clause	Provision	Agreement between an employer and:
8.3(c)	Breaks—breakfast	An individual
8.5(b) and (c)	Breaks—tea	An individual
12.4	Time off instead of payment for overtime	An individual
14.4	Annual leave in advance	An individual
14.5`	Cashing out of annual leave	An individual

Part 2—Types of Employment

6. Types of employment

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

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

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

6.3 Full-time employees

An employer may employ an employee on a full-time basis of 38 hours per week.

6.4 Part-time employees

The inclusion of “regular” in clause 6.4(g) to be addressed after Part-time employment and Casual employment Full Bench has determined the matters in AM2014/196 and AM2014/197 – see [\[2017\] FWCFB 3433](#) at [306].

- (a) An employer may employ part-time employees in any classification in this award.
- (b) A part-time employee is an employee who:
 - (i) has reasonably predictable hours of work; and
 - (ii) receives on a pro rata basis equivalent pay and conditions to those of full-time employees who do the same kind of work.
- (c) A part-time employee employed under clause 6.4 must be paid at the ordinary hourly rate for the employee’s classification in clause 9.1.
- (d) All leave accruals and separation entitlements of part-time employees will be calculated and paid on a pro rata basis of the full-time employee at the full-time rate of pay.
- (e) At the time of engagement the employer and the part-time employee will agree in writing, on a regular pattern of work, specifying at least:
 - (i) the hours worked each day;
 - (ii) the days of the week the employee will work; and
 - (iii) the actual starting and finishing times each day.
- (f) Any agreed variation to the regular pattern of work will be recorded in writing.
- (g) An employer is required to roster a regular part-time employee for a minimum of two consecutive hours on any shift.

Parties were asked to make submissions on outstanding issues raised in relation to this award by 10 December 2018. Following conference on 20 December 2018 these matters to be determined on the papers [\[2018\] FWCFB 7145](#) at [23] and in [\[2019\] FWCFB 932](#).

Clause 6.4(h) amended in accordance with [\[2018\] FWCFB 1405](#) at [293].

- (h) All time worked in excess of the hours as mutually agreed ~~arranged, excluding any additional hours,~~ will be overtime.
- (i) **Conversion of employment—full-time to part-time or part-time to full-time**
 - (i) Part-time employment may be converted to full-time employment and full-time employment may be converted to part-time employment in accordance with clause 6.4(i).

- (ii) Conversion to or from part-time or full-time employment under clause 6.4(i)(i) may only occur where the employer and employee agree in writing.
- (iii) If an employee converts their employment in accordance with clause 6.4(i)(i), all accrued award and legislative entitlements will be maintained.
- (iv) Following a conversion to part-time employment accrual will occur in accordance with the provisions relevant to part-time employment.

6.5 Casual employment

- (a) A casual employee is an employee engaged and paid as a casual employee.
- (b) **Casual loading**
 - (i) For each ordinary hour worked, a casual employee must be paid:
 - the ordinary hourly rate; and
 - a loading of **25%** of the ordinary hourly rate,for the classification in which they are employed.
 - (ii) The casual loading incorporates the casual employees' entitlements to annual leave, annual leave loading and any other rates and allowances contained in this award except overtime and shift allowances.
- (c) Casual employees must be paid at the termination of each engagement, but may agree to be paid weekly or fortnightly.
- (d) An employee who does not meet the definition of a regular part-time employee and who is not a full-time employee will be paid as a casual employee.
- (e) **Minimum payment for casual employees**

On each occasion a casual employee is required to attend work they are entitled to a minimum payment for three hours' work.

6.6 Right to request casual conversion

Clause 6.6 inserted in accordance with [PR700598](#).

- (a) A person engaged by a particular employer as a regular casual employee may request that their employment be converted to full-time or part-time employment.
- (b) A **regular casual employee** is a casual employee who has in the preceding period of 12 months worked a pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to perform as a full-time employee or part-time employee under the provisions of this award.

- (c) A regular casual employee who has worked equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to full-time employment.
- (d) A regular casual employee who has worked less than equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to part-time employment consistent with the pattern of hours previously worked.
- (e) Any request under this subclause must be in writing and provided to the employer.
- (f) Where a regular casual employee seeks to convert to full-time or part-time employment, the employer may agree to or refuse the request, but the request may only be refused on reasonable grounds and after there has been consultation with the employee.
- (g) Reasonable grounds for refusal include that:
 - (i) it would require a significant adjustment to the casual employee's hours of work in order for the employee to be engaged as a full-time or part-time employee in accordance with the provisions of this award – that is, the casual employee is not truly a regular casual employee as defined in paragraph (b);
 - (ii) it is known or reasonably foreseeable that the regular casual employee's position will cease to exist within the next 12 months;
 - (iii) it is known or reasonably foreseeable that the hours of work which the regular casual employee is required to perform will be significantly reduced in the next 12 months; or
 - (iv) it is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the employee's hours of work are required to be performed in the next 12 months which cannot be accommodated within the days and/or hours during which the employee is available to work.
- (h) For any ground of refusal to be reasonable, it must be based on facts which are known or reasonably foreseeable.
- (i) Where the employer refuses a regular casual employee's request to convert, the employer must provide the casual employee with the employer's reasons for refusal in writing within 21 days of the request being made. If the employee does not accept the employer's refusal, this will constitute a dispute that will be dealt with under the dispute resolution procedure in clause 23. Under that procedure, the employee or the employer may refer the matter to the Fair Work Commission if the dispute cannot be resolved at the workplace level.
- (j) Where it is agreed that a casual employee will have their employment converted to full-time or part-time employment as provided for in this clause, the employer and employee must discuss and record in writing:

- (i) the form of employment to which the employee will convert – that is, full-time or part-time employment; and
 - (ii) if it is agreed that the employee will become a part-time employee, the matters referred to in clause 6.4(e).
- (k) The conversion will take effect from the start of the next pay cycle following such agreement being reached unless otherwise agreed.
 - (l) Once a casual employee has converted to full-time or part-time employment, the employee may only revert to casual employment with the written agreement of the employer.
 - (m) A casual employee must not be engaged and re-engaged (which includes a refusal to re-engage), or have their hours reduced or varied, in order to avoid any right or obligation under this clause.
 - (n) Nothing in this clause obliges a regular casual employee to convert to full-time or part-time employment, nor permits an employer to require a regular casual employee to so convert.
 - (o) Nothing in this clause requires an employer to increase the hours of a regular casual employee seeking conversion to full-time or part-time employment.
 - (p) An employer must provide a casual employee, whether a regular casual employee or not, with a copy of the provisions of this subclause within the first 12 months of the employee’s first engagement to perform work. In respect of casual employees already employed as at 1 October 2018, an employer must provide such employees with a copy of the provisions of this subclause by 1 January 2019.
 - (q) A casual employee’s right to request to convert is not affected if the employer fails to comply with the notice requirements in paragraph (p).

Part 3—Hours of Work

7. Ordinary hours of work and rostering

7.1 This clause supplements Division 3 of the [NES](#) which deals with maximum weekly hours.

7.2 Span of hours

Parties were asked to make submissions on outstanding issues raised in relation to this award by 10 December 2018. Following conference on 20 December 2018 these matters to be determined on the papers [\[2018\] FWCFB 7145](#) at [23].

Ordinary hours may be worked between 6.00 am and 6.00 pm for up to eight hours per day, Monday to Friday inclusive.

7.3 Rostering

An employee will be rostered off for two consecutive days each week except where the employer and the employee agree otherwise.

7.4 10 hour break

- (a) An employee who has been on duty continuously, including meal breaks, for more than 18 hours will not be required by their employer to continue duty until they have had a period of 10 hours off duty for the purpose of rest.
- (b) If an employee resumes or continues work at the request of the employer after they have been on duty continuously, including meal breaks for more than 18 hours, they will be entitled to be paid at **200%** of the ordinary hourly rate for the period of duty **in addition to** any other payment due to them until the 10 hours' rest period from duty commences.
- (c) Employees will be paid their ordinary hourly rate for any rest period occurring in ordinary working hours.

8. Breaks—unpaid

Clause 8.2 inserted in accordance with [\[2018\] FWCFB 1405](#) at [293].

8.1 An employee will not be required to work for more than five hours without a break for a meal.

8.2 The meal breaks in clauses 8.3–8.5 are unpaid.

8.3 Breakfast

- (a) Breakfast is the hour preceding the usual starting time.
- (b) The breakfast break will not be taken when employees are required to commence at 7.00 am or after, and preceding the usual starting time.
- (c) By mutual agreement between the employer and employees concerned, a 20 minute rest period may be taken without deduction of pay instead of the prescribed hour for breakfast.
- (d) This rest period will commence 20 minutes before the usual starting time unless otherwise mutually agreed.
- (e) Employees ordered in to dock or shift a vessel at 7.00 am will not be entitled to a meal break before noon.
- (f) Employees ordered in at any time before 7.00 am will have an hour for breakfast not later than 8.00 am or a rest period of 20 minutes as provided in clause 8.3(c).

8.4 Lunch

Lunch is from noon to 12.45 pm, or such period as is the usual custom of the establishment at which the employees are employed.

8.5 Tea

- (a) Tea is from 5.00 pm to 6.00 pm or according to the usual custom of the establishment at which the employees are employed.
- (b) By mutual agreement between the employer and employee concerned a rest period may be taken without deduction of pay instead of the prescribed hour for tea.
- (c) The times prescribed in clause 8.5(a) may be altered by mutual agreement between the employer and employee concerned.

8.6 Payment for work during breaks

- (a) An employee will be paid **200%** of the ordinary hourly rate for all work done during the breakfast, lunch and tea breaks specified above.
- (b) Payment at **200%** of the ordinary hourly rate will continue until the employees are granted a meal break or are released from duty.
- (c) Clauses 8.6(a) and (b) have no application to establishments or jobs where, in accordance with this clause, it is customary for paid rest periods to be taken instead of the breakfast and/or tea breaks, and the rest periods are allowed and taken.

Part 4—Wages and Allowances

9. Minimum wages

Relativity between Master and Engineer to be determined by [AM2016/5](#).

Monetary amounts adjusted as a result of AWR 2018.

9.1 An employer must pay employees the following minimum wages for ordinary hours worked by the employee:

Classification	Minimum weekly rate	Minimum hourly rate
	\$	\$
Master	980.90	25.81
Mate	934.20	24.58
Engineer	934.20	24.58
General Purpose Hand, Deckhand, Greaser, Passenger Attendant, Turnstile Attendant, Boating Attendant, Host, Fireman, Trimmer, Linesman, Cook, Sailor, Able Seaman, Leading Hand	884.10	23.27

Shipkeeper	810.50	21.33
Crane Driver (under 20 tonnes)	824.90	21.71
Crane Driver (over 20 tonnes)	908.20	23.90

Clarification of payment rate for a crane driver at 20 tonnes will be addressed after the Full Bench has determined the coverage issues in [AM2016/5](#). See [2017 FWCFB 3433](#) at [305]

See Schedule A for a summary of hourly rates of pay including overtime penalties.

9.2 — Payment of wages

Clause 9.2 renumbered as clause 9A.

~~Wages will be paid weekly or fortnightly. Wages may be paid by cash or electronic funds transfer (EFT).~~

~~NOTE: Regulations 3.33(3) and 3.46(1)(g) of *Fair Work Regulations 2009* set out the requirements for pay records and the content of payslips including the requirement to separately identify any allowance paid.~~

9.2 9.3 Higher duties

Clause 9.2 amended in accordance with [\[2018\] FWCFB 1405](#) at [293].

An employee engaged for more than two hours during one day on ~~duties~~ work carrying a higher rate than their ordinary classification will be paid the higher rate for that day. If engaged for two hours or less during one day they will be paid the higher rate for the time worked at the higher classification.

9A. Payment of wages

Clause 9.2 renumbered as clause 9A; Note moved; Clause 9A inserted in accordance with [PR610078](#).

NOTE: Regulations 3.33(3) and 3.46(1)(g) of *Fair Work Regulations 2009* set out the requirements for pay records and the content of payslips including the requirement to separately identify any allowance paid.

9A.1 Wages will be paid weekly or fortnightly. Wages may be paid by cash or electronic funds transfer (EFT).

9A.2 Payment on termination of employment

- (a) The employer must pay an employee no later than 7 days after the day on which the employee's employment terminates:
 - (i) the employee's wages under this award for any complete or incomplete pay period up to the end of the day of termination; and
 - (ii) all other amounts that are due to the employee under this award and the [NES](#).

- (b) The requirement to pay wages and other amounts under paragraph (a) is subject to further order of the Commission and the employer making deductions authorised by this award or the [Act](#).

NOTE 1: Section 117(2) of the [Act](#) provides that an employer must not terminate an employee's employment unless the employer has given the employee the required minimum period of notice or "has paid" to the employee payment instead of giving notice.

NOTE 2: Paragraph (b) allows the Commission to make an order delaying the requirement to make a payment under this clause. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under section 120 of the [Act](#) for the Commission to reduce the amount of redundancy pay an employee is entitled to under the [NES](#).

NOTE 3: State and Territory long service leave laws or long service leave entitlements under section 113 of the [Act](#), may require an employer to pay an employee for accrued long service leave on the day on which the employee's employment terminates or shortly after.

10. Allowances

Monetary amounts adjusted as a result of AWR 2018.

Employers must pay to an employee the allowances the employee is entitled to under this clause. See Schedule B for a summary of monetary allowances and method of adjustment.

10.1 Wage-related allowances

(a) All purpose allowances

Allowances paid for **all purposes** are included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties or loadings or payment while they are on annual leave. The following allowances are paid for all purposes under this award:

- (i) dual capacity allowances (clause 10.1(d))
- (ii) towing allowance—towing or carrying explosives (clause 10.1(m)(i));
and
- (iii) towing allowance—towing non self-propelled bunker barges (clause 10.1(m)(ii)).

(b) Charge hands

Charge hands will be paid an allowance of **\$28.82** per week. Charge hands not directly supervised by a foreman in the allocation of duties to employees will be paid an allowance of **\$42.88** per week.

(c) Distant work

- (i) A relieving employee other than a casual employee who is required to work at a place away from their normal place of work will be paid all additional fares involved and additional travelling time involved at the rate of single time; provided that no employee will be paid more than their ordinary day's wages for any time not exceeding 24 hours spent travelling.
- (ii) A relieving employee including a casual employee who is temporarily transferred to a locality to carry out relieving duties, where it is necessary to sleep away from their home, will be provided with reasonable board and lodging or paid an allowance of **\$497.13** week of seven days. In the case of broken parts of a week, the allowance will be all living expenses actually and reasonably incurred but not exceeding **\$70.73** per day.

(d) Dual capacity allowance

Clause 10.1(d) amended and (e) moved in accordance with [\[2018\] FWCFB 1405](#) at [293].

An employee who is a holder of a Certificate of Competency as a Marine Motor Engineer will be paid an allowance of **\$5.13** (~~**\$0.64**~~ per hour) for each day or part of a day during which they are required to use such a certificate. The allowance prescribed by this subclause will, when paid, be deemed to be part of the ordinary rate of wages for the purpose of calculating overtime, annual leave, sick leave and long service leave.

~~**(e) Uniforms**~~

~~Where employees are required to wear uniforms, these will be provided by the employer at no cost to the employee. Alternatively, the employer will pay to the employee the sum of **\$16.62** per week. Uniforms will be laundered by the employer.~~

~~**(f) Compensation for loss of personal effects**~~

~~The employer will compensate the employee to the extent of damage or loss to a maximum of **\$1738.97** if:~~

- ~~(i) in the course of employment, an employee should sustain damage to or loss of their personal effects by fire, explosion, foundering, shipwreck, collision, stranding or accident and where the damage was not caused by the employee's own wilful neglect or fault; or~~
- ~~(ii) where the personal effects are lost through breaking or entering while securely stored at the employer's direction in a room or building on the employer's premises, vessel or work shop.~~

(e) Dirty work

- (i) An employee called upon to perform work which is more dirty or offensive than would normally apply will be paid an additional **\$0.62** per hour for the time spent on such work.

- (ii) Provided that, instead of the above allowance, for all work an employee is required to perform alongside vessels in discharging alumina, petroleum, coke, sulphur, anhydrous ammonia and all phosphates, the employee will be paid an allowance of **\$1.59** per hour. The employee will be eligible for this payment from the time the barge ties up to the vessel until the time it returns to its berth at the completion of the bunker.

(f) Wet work

- (i) Any employee working in water or wet places will be paid an extra allowance of **\$0.27** per hour.
- (ii) **Wet places** mean places where, in the performance of the work, the splashing of water or mud saturates the employee's clothing, or where protection is not provided to prevent splashing or dripping sufficient to saturate their clothing, and will include wet material or wet ground in which it is impracticable for the employee wearing ordinary working boots to work without getting wet feet. Provided this clause will not apply to employees working on natural surfaces made wet by rain.

(g) Unloading and loading garbage allowance

An employee called upon to work at loading or unloading garbage and/or ashes or other like material will be paid an allowance of **\$0.62** per hour.

Clause 10.1(h) amended in accordance with [\[2018\] FWCFB 1405](#) at [293].

~~**(h) Slipway etc. allowance**~~

~~A junior employee called to work on slipways, cleaning, scraping, painting or overhauling launches, barges, punts or any other floating plant will be paid an allowance of **\$0.68** per hour.~~

(h) Bilge allowance

An employee required to work in the bilges will be paid an allowance of **\$0.97** per hour.

(i) Chipping hammers

Employees using electric or pneumatic chipping hammers, wire brushing machine and sandblasting machine will be paid **\$0.09** per hour in addition to any other ordinary or overtime rate for the time so occupied. Where a chipping hammer is being used in a confined space, suitable ventilation will be installed, if practicable, before work commences.

(j) First aid

An employee on becoming qualified as the holder of appropriate first aid qualifications such as a certificate from the St John Ambulance or its equivalent, and who is required by the employer to perform first aid duty, will be paid an allowance of **\$15.03** per week.

(k) Loading and discharge of cargo and supplies

Clause 10.1(k) amended in accordance with [\[2018\] FWCFB 1405](#) at [293].

An employee directed by the employer to load or discharge cargo including personal belongings of passengers, foodstuffs, beverages, or laundry, will be paid allowances as set out below when so engaged.

- (i) On vessels including barges and landing craft transporting passengers and cargo including fuel and or water and roll on/roll off cargoes between the mainland and island resorts:
- ~~\$26.43~~ per week of \$5.29 for the first five working days; and
 - ~~where an employee is so engaged in any week in excess of five days they will be paid an additional \$5.39 per day~~ \$5.39 thereafter.
- (ii) On vessels (including barges and landing craft) transporting cargo only between the mainland and island resorts or between island resorts – **\$46.24** per trip.
- (iii) On vessels engaged in overnight cruises of one to six nights – **\$17.77** per trip.
- (iv) On vessels engaged in overnight cruises over six nights – **\$26.52** per trip.
- (v) Provided that:
- an additional amount will not be payable where the loading or discharge is restricted to ships stores, fuel and or water cargoes, incidental personal belongings of passengers, or other items required on board exclusively for a day cruise; and
 - an employee may be required to supervise the loading or discharge (including roll on/roll off cargoes) where such work is part of their normal duties, without additional payment.

(l) Waiting orders

The text of this clause will be retained unless parties press for change in relation to item 19 of the [summary of submissions](#).

- (i) An employee who is required by their employer to telephone for orders will:
- if an employee has a telephone installed at their home, be paid the annual rental of such telephone plus **\$145.96** per year for calls necessarily incurred by the employee for ringing for such orders. If the employee is required by their employer to have a phone installed, the installation fee will be paid by the employer; or
 - an off-duty employee required to ring for orders other than on a phone provided totally or in part by the employer, will receive an allowance of **\$3.71** for each call.

(m) Towing

- (i) Employees on any vessel either towing or carrying explosives will be paid an additional **\$2.56** for each day or part thereof while so engaged. This rate will be treated as part of the wages for all purposes of this award. For the purposes of this subclause, **explosives** means any material used as an explosive, such as gunpowder, blasting powder or materials, or any other material of like nature, but does not include petroleum products.
- (ii) Masters engaged in towing non self-propelled bunker barges having a carrying capacity of 400 tonnes or more, will be paid an additional amount of **\$2.39** for each day or part thereof while so engaged. Provided that moving such bunker barges at terminal points is not regarded as towing within this provision. This rate will be treated as part of the wages for all purposes of this award.
- (iii) Employees on vessels proceeding beyond the limits of a harbour, river or bay will whilst so engaged be paid their ~~normal wage~~ ordinary hourly rate plus an allowance of **25%** of their ~~normal wage~~ ordinary hourly rate for each day with a minimum payment for four hours.

(n) Ships stranded or wrecked or on fire

- (i) An employee will be paid **\$15.12** per hour for the time they are required to assist if a ship, in the course of a voyage, becomes wrecked or stranded and the employees are called on for special efforts while the ship is still wrecked or stranded.
- (ii) For the purposes of this clause a ship will be deemed to be **wrecked** if, while at sea, it is so disabled it becomes a dangerous crisis and unable for the time being to continue its voyage in the ordinary course of its operations.
- (iii) Where a ship grounds in a tidal river or harbour and is refloated by ordinary means, with or without cargo, and without special work such as laying out anchors and handling hawsers being required of the employees, it will not be deemed to be wrecked or stranded within the meaning of clause 10.1(n)(i).

(o) Duties outside normal work—diving

An amount of **\$4.86** per day will be paid in excess of other wages and allowances to employees, for each day they are required to perform the duties of diving to clean glass bottom boats or to clear obstructions from boats propellers.

10.2 Expense-related allowances

(a) Meal allowances

- (i) An employee will be provided with a suitable meal or be paid an allowance of **\$16.62** when the employee is required to work overtime in

excess of one and a half hours after the usual ceasing time without being notified the previous day.

- (ii) Should the overtime work continue for a further four hours, the employee will be provided with a second meal or be paid an additional **\$16.62**.

(b) Expenses

The employer will reimburse an employee any expenses reasonably incurred by them in the service or interest of the employer, provided the employee is able to prove such expense by way of receipts.

(c) Bedding and other utensils

- (i) When vessels are away during the night, the employer will supply a mattress, two blankets, two sheets, one pillow, one pillow slip, towel, soap, eating utensils, washing cloths and drying towels. Laundering is the responsibility of the employer.
- (ii) On termination of employment an employee will be required to return to the employer all articles on issue to them.

Clause 10.2(d) inserted in accordance with [\[2018\] FWCFB 1405](#) at [293].

(d) Compensation for loss of personal effects

The employer will compensate the employee to the extent of damage or loss to a maximum of **\$1859.26** if:

- (i) in the course of employment, an employee should sustain damage to or loss of their personal effects by fire, explosion, foundering, shipwreck, collision, stranding or accident and where the damage was not caused by the employee's own wilful neglect or fault; or
- (ii) where the personal effects are lost through breaking or entering while securely stored at the employer's direction in a room or building on the employer's premises, vessel or work shop.

(e) Protective clothing

On request an employee will be supplied by the employer with an oilskin, waterproof coat, sea boots, overalls, gloves, hard hats, sunscreen lotion, safety glasses, safety shoes, sunglasses and ear protection devices for their own use when it is reasonably necessary to wear such protective clothing.

(f) Tools

Where employees are required to provide and use their own tools the employer will be responsible for the replacement of such tools broken, worn out, lost or stolen in the course of employment.

(g) Transport

Clause 10.2(g)(ii) amended in accordance with [\[2018\] FWCFB 1405](#) at [293].

- (i) Where an employee commences or finishes work or is required for call-out between the hours of 11.00 pm and 6.00 am the employer will:
- supply them with a conveyance to or from their home whichever is appropriate;
 - pay them for time spent in reaching their home or travelling there from at the employee's ordinary weekly rate with a minimum of half an hour and a maximum of one hour; or
 - if by arrangement with their employer the employee uses their own motor vehicle they will receive an allowance of not less than **\$0.78** per kilometre.
- (ii) An employee required to use their own vehicle to travel to or from a starting or finishing point other than their regular starting or finishing point:
- will be paid **\$0.78** per kilometre for the distance in excess of the distance involved in getting to their normal starting or finishing point; and
 - will be paid at their ordinary hourly rate for the time in excess of the time involved in getting to their normal starting or finishing point, with a minimum of payment of half an hour and a maximum of one hour.
- (iii) Where an employee who is not required to use their own motor vehicle for work is required, in the ordinary course of employment, to begin their work for the day at a particular place, and finish their work at a different place, the employee:
- will be paid any reasonable travelling expenses; and
 - will also be paid at overtime rates of pay for any travelling time beyond their ordinary travelling time.

(h) Travelling to another port

- (i) When an employee is required to travel from their home port to another port, time spent travelling outside of their ordinary hours will be paid for as travelling time.
- (ii) The rate of pay for travelling time will be ordinary rates, except on Sundays and public holidays when it will be at **150%** of the ordinary hourly rate.
- (iii) The maximum travelling time to be paid for will be eight hours on any one day.

(i) Travelling expenses

- (i) Where an employee is required to join or leave a vessel at a place other than their place of engagement, they will be entitled to a free passage and to be reimbursed all out of pocket expenses reasonably incurred by them.

- (ii) If the free passage is by rail it will be first class and will include a sleeping berth when the train includes sleeping berth accommodation. If the free passage is by air it will be in commercial aircraft; first class if available.

(j) Living away from home

Clause 10.2(j)(ii) amended in accordance with [\[2018\] FWCFB 1405](#) at [293].

- (i) An employer will provide the employee with proper meals and accommodation and be responsible for payment of reasonable expenses actually incurred for meals and accommodation ashore, whilst the employee is away from the vessel's home port.
- (ii) Every employee will be provided with proper meals, ~~attendances~~ eating utensils, bedding and soap, and be supplied once a week with clean bed linen and twice a week with clean towels whilst at sea. The employer will be responsible for the laundering of linen and towels.
- (iii) Where it is the employer's responsibility to provide the employee with proper meals and accommodation ashore, and the employer fails to do so, the employer will reimburse the employee for all costs incurred in relation to normal meals and charges incurred for a good standard of accommodation.
- (iv) Tea, sugar, milk and coffee will be provided on all vessels for employees at the employer's expense.

Clause 10.2(k) inserted in accordance with [\[2018\] FWCFB 1405](#) at [293].

(k) Uniforms

Where employees are required to wear uniforms, these will be provided by the employer at no cost to the employee. Alternatively, the employer will pay to the employee the sum of \$17.77 per week. Uniforms will be laundered by the employer.

See Schedule B for a summary of monetary allowances

11. Superannuation

11.1 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.

11.2 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.

11.3 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 11.2.
- (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 11.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 11.3(a) or (b) was made.

11.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 11.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 11.2 and pay the amount authorised under clauses 11.3(a) or (b) to one of the following superannuation funds or its successor:

- (a) Maritime Super;
- (b) AMP Superannuation Savings Trust;
- (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 superannuation scheme; or
- (d) a superannuation fund or scheme which the employee is a defined benefit member of.

Part 5—Penalties and Overtime

12. Overtime and penalty rates

12.1 Entitlement to payment for overtime

Overtime is payable to employees for any time worked outside of ordinary hours on a Monday to Friday (except a public holiday).

Parties were asked to make submissions on the outstanding issues raised in relation to this award by 10 December 2018. A conference was held on 20 December 2018 and these matters will now be determined on the papers see [\[2018\] FWCFCB 7145](#) at [23].

12.2 Employees will be paid the following rates for ~~all~~ overtime worked **Monday to Friday, work on a Saturday or on a Sunday, or work on a public holiday** ~~or ordinary weekend work at the following rates:~~

		% of ordinary hourly rate
Overtime		
Monday to Friday	First three hours	150
	After three hours	200
Saturday		150
Sunday		200
Public holiday		250

12.3 Minimum payment for recall to work overtime

An employee will be paid for a minimum of four hours if recalled to work overtime after leaving the employer's premises.

12.4 Time off instead of payment for overtime

- (a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (b) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 12.4.
- (c) An agreement must state each of the following:
 - (i) the number of overtime hours to which it applies and when those hours were worked;
 - (ii) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;

- (iii) that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;
- (iv) that any payment mentioned in subparagraph (iii) must be made in the next pay period following the request.

Note: An example of the type of agreement required by this clause is set out at Schedule C. There is no requirement to use the form of agreement set out at Schedule C. An agreement under clause 12.4 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

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

EXAMPLE: By making an agreement under clause 12.4 an employee who worked 2 overtime hours is entitled to 2 hours' time off.

- (e) Time off must be taken:
 - (i) within the period of 6 months after the overtime is worked; and
 - (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (f) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 12.4 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in paragraph (e), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (h) The employer must keep a copy of any agreement under clause 12.4 as an employee record.
- (i) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (j) An employee may, under section 65 of the [Act](#), request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 12.4 will apply, including the requirement for separate written agreements under paragraph (b) for overtime that has been worked.

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

- (k) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 12.4 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

Note: Under section 345(1) of the [Act](#), a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 12.4

13. Shiftwork

Parties were asked to make submissions on the outstanding issues (items 7, 9 and 23) raised in relation to this award by 10 December 2018. A conference was held on 20 December 2018 and these matters will now be determined on the papers see [\[2018\] FWC FB 7145](#) at [23].

13.1 Shiftwork definitions:

- (a) **afternoon shift** means any shift finishing after 6.00 pm and at or before midnight;
- (b) **continuous work** means work carried out:
- (i) on consecutive shifts of employees;
 - (ii) over 24 hours a day;
 - (iii) for at least six consecutive days; and
 - (iv) without interruption, except during breakdowns, meal breaks or due to unavoidable causes beyond the control of the employer;
- (c) **night shift** means any shift finishing after midnight and at or before 8.00 am;
- (d) **permanent night shift** employee means an employee who:
- (i) during a period of engagement on shift, works night shift only;
 - (ii) remains on night shift for a period longer 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 them at least one third of their working time off night shift in each shift cycle during such engagement period or cycle.

13.2 Shiftwork rates

Type of shift	% of the ordinary hourly rate
Afternoon shift	115
Night shift	115
Permanent night shift	130

Part 6—Leave, Public Holidays and Other NES Entitlements

14. Annual leave

14.1 The following provisions supplement the [NES](#).

14.2 Annual leave loading

A loading of **17.5%** (**20%** for shiftworkers) is payable in addition to the payment for the leave.

NOTE: Where an employee is receiving overaward payments such that the employee’s base rate of pay is higher than the rate specified under this award, the employee is entitled to receive the higher rate while on a period of paid annual leave (see ss.16 and 90 of the [Act](#)).

14.3 Shiftworkers

For the purpose of Division 6 of the [NES](#) a shiftworker is an employee employed on shiftwork where three shifts per day are worked over a period of seven days per week or an employee regularly rostered to work on Sundays and public holidays.

14.4 Annual leave in advance

- (a) An employer and employee may agree in writing to the employee taking a period of paid annual leave before the employee has accrued an entitlement to the leave.
- (b) An agreement must:
 - (i) state the amount of leave to be taken in advance and the date on which leave is to commence; and
 - (ii) be signed by the employer and employee and, if the employee is under 18 years of age, by the employee’s parent or guardian.

Note: An example of the type of agreement required by clause 14.4 is set out at Schedule C. There is no requirement to use the form of agreement set out at Schedule C.

- (c) The employer must keep a copy of any agreement under clause 14.4 as an employee record.

- (d) If, on the termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under clause 14.4, the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

14.5 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 14.5.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 14.5.
- (c) An employer and an employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee.
- (d) An agreement under clause 14.5 must state:
 - (i) the amount of leave to be cashed out and the payment to be made to the employee for it; and
 - (ii) the date on which the payment is to be made.
- (e) An agreement under clause 14.5 must be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
- (f) The payment must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made.
- (g) An agreement must not result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.
- (h) The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.
- (i) The employer must keep a copy of any agreement under clause 14.5 as an employee record.

Note 1: Under section 344 of the [Act](#), an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 14.5.

Note 2: Under section 345(1) of the [Act](#), a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 14.5.

Note 3: An example of the type of agreement required by clause 14.5 is set out at Schedule E. There is no requirement to use the form of agreement set out at Schedule E.

14.6 Excessive leave accruals: general provision

Note: Clauses 14.6 to 14.8 contain provisions, additional to the [NES](#), about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the [Act](#).

- (a) An employee has an **excessive leave accrual** if the employee has accrued more than 8 weeks' paid annual leave (or 10 weeks' paid annual leave for a shiftworker, as defined by clause 14.3).
- (b) If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (c) Clause 14.7 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 14.8 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

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

- (a) If an employer has genuinely tried to reach agreement with an employee under clause 14.6(b) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.
- (b) However, a direction by the employer under paragraph (a):
 - (i) is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements (whether made under clause 14.6, 14.7 or 14.8 or otherwise agreed by the employer and employee) are taken into account; and
 - (ii) must not require the employee to take any period of paid annual leave of less than one week; and
 - (iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
 - (iv) must not be inconsistent with any leave arrangement agreed by the employer and employee.
- (c) The employee must take paid annual leave in accordance with a direction under paragraph (a) that is in effect.
- (d) An employee to whom a direction has been given under paragraph (a) may request to take a period of paid annual leave as if the direction had not been given.

Note 1: Paid annual leave arising from a request mentioned in paragraph (d) may result in the direction ceasing to have effect. See clause 14.7(b)(i).

Note 2: Under section 88(2) of the [Act](#), the employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.

14.8 Excessive leave accruals: request by employee for leave

- (a) Clause 14.8 comes into operation from 20 December 2017.
- (b) If an employee has genuinely tried to reach agreement with an employer under clause 14.6(b) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.
- (c) However, an employee may only give a notice to the employer under paragraph (b) if:
 - (i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and
 - (ii) the employee has not been given a direction under clause 14.7(a) that, when any other paid annual leave arrangements (whether made under clause 14.6, 14.7 or 14.8 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.
- (d) A notice given by an employee under paragraph (b) must not:
 - (i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 14.6, 14.7 or 14.8 or otherwise agreed by the employer and employee) are taken into account; or
 - (ii) provide for the employee to take any period of paid annual leave of less than one week; or
 - (iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or
 - (iv) be inconsistent with any leave arrangement agreed by the employer and employee.
- (e) An employee is not entitled to request by a notice under paragraph (b) more than 4 weeks' paid annual leave (or 5 weeks' paid annual leave for a shiftworker, as defined by clause 14.3) in any period of 12 months.
- (f) The employer must grant paid annual leave requested by a notice under paragraph (b).

15. Parental leave and related entitlements

Parental leave and related entitlements are provided for in the [NES](#).

16. Personal/carer's leave and compassionate leave

Personal/carer's leave and compassionate leave are provided for in the [NES](#).

17. Community service leave

Community service leave is provided for in the [NES](#).

18. Public holidays

18.1 Public holiday entitlements are provided for in the [NES](#).

18.2 An employee will be paid at **250%** of the ordinary hourly rate with a minimum of four hours' work when required to work on a public holiday.

18.3 Part-day public holidays

For provisions in relation to part-day public holidays see Schedule F—Part-day Public Holidays.

19. Leave to deal with family and domestic violence

Clause 19 inserted in accordance with [PR609370](#).

19.1 This clause applies to all employees, including casuals.

19.2 Definitions

(a) In this clause:

family and domestic violence means violent, threatening or other abusive behaviour by a family member of an employee that seeks to coerce or control the employee and that causes them harm or to be fearful.

family member means:

- (i) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or
- (ii) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee; or
- (iii) a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.

(b) A reference to a spouse or de facto partner in the definition of family member in clause 19.2(a) includes a former spouse or de facto partner.

19.3 Entitlement to unpaid leave

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

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

Note 1: A period of leave to deal with family and domestic violence may be less than a day by agreement between the employee and the employer.

Note 1: The employer and employee may agree that the employee may take more than 5 days' unpaid leave to deal with family and domestic violence.

19.4 Taking unpaid leave

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

- (a) is experiencing family and domestic violence; and
- (b) needs to do something to deal with the impact of the family and domestic violence and it is impractical for the employee to do that thing outside their ordinary hours of work.

Note: The reasons for which an employee may take leave include making arrangements for their safety or the safety of a family member (including relocation), attending urgent court hearings, or accessing police services.

19.5 Service and continuity

The time an employee is on unpaid leave to deal with family and domestic violence does not count as service but does not break the employee's continuity of service.

19.6 Notice and evidence requirements

(a) Notice

An employee must give their employer notice of the taking of leave by the employee under clause 19. The notice:

- (i) must be given to the employer as soon as practicable (which may be a time after the leave has started); and
- (ii) must advise the employer of the period, or expected period, of the leave.

(b) Evidence

An employee who has given their employer notice of the taking of leave under clause 19 must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for the purpose specified in clause 19.4.

Note: Depending on the circumstances such evidence may include a document issued by the police service, a court or a family violence support service, or a statutory declaration.

19.7 Confidentiality

- (a) Employers must take steps to ensure information concerning any notice an employee has given, or evidence an employee has provided under clause 19.6 is treated confidentially, as far as it is reasonably practicable to do so.
- (b) Nothing in clause 19 prevents an employer from disclosing information provided by an employee if the disclosure is required by an Australian law or is necessary to protect the life, health or safety of the employee or another person.

Note: Information concerning an employee’s experience of family and domestic violence is sensitive and if mishandled can have adverse consequences for the employee. Employers should consult with such employees regarding the handling of this information.

19.8 Compliance

An employee is not entitled to take leave under clause 19 unless the employee complies with clause 19.

20. Termination of employment

Clause 20 substituted in accordance with [PR610215](#).

20.1 Notice of termination by an employee

- (a) This clause applies to all employees except those identified in ss.123(1) and 123(3) of the [Act](#).
- (b) An employee must give the employer notice of termination in accordance with **Table 1—Period of notice** of at least the period specified in column 2 according to the period of continuous service of the employee specified in column 1.

Table 1—Period of notice

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

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

- (c) In paragraph (b) **continuous service** has the same meaning as in s.117 of the [Act](#).

- (d) If an employee who is at least 18 years old does not give the period of notice required under paragraph (b), then the employer may deduct from wages due to the employee under this award an amount that is no more than one week's wages for the employee.
- (e) If the employer has agreed to a shorter period of notice than that required under paragraph (b), then no deduction can be made under paragraph (d).
- (f) Any deduction made under paragraph (d) must not be unreasonable in the circumstances.

20.2 Job search entitlement

- (a) Where an employer has given notice of termination to an employee, the employee must be allowed time off without loss of pay of up to one day for the purpose of seeking other employment.
- (b) The time off under clause 20.2 is to be taken at times that are convenient to the employee after consultation with the employer.

20.3 Return to place of engagement

If the employment of any employee is terminated by the employer elsewhere than at the place of engagement, for any reason other than misconduct, the employer will be responsible for conveying the employee to the place of engagement.

21. Redundancy

21.1 Redundancy pay is provided for in the [NES](#).

21.2 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.

21.3 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.

21.4 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 20.2.

Part 7—Consultation and Dispute Resolution

22. Consultation about major workplace change

Clause 22 substituted in accordance with [PR610215](#).

- 22.1** If an employer makes a definite decision to make major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must:
- (a) give notice of the changes to all employees who may be affected by them and their representatives (if any); and
 - (b) discuss with affected employees and their representatives (if any):
 - (i) the introduction of the changes; and
 - (ii) their likely effect on employees; and
 - (iii) measures to avoid or reduce the adverse effects of the changes on employees; and
 - (c) commence discussions as soon as practicable after a definite decision has been made.
- 22.2** For the purposes of the discussion under clause 22.1(b), the employer must give in writing to the affected employees and their representatives (if any) all relevant information about the changes including:
- (a) their nature; and
 - (b) their expected effect on employees; and
 - (c) any other matters likely to affect employees.
- 22.3** Clause 22.2 does not require an employer to disclose any confidential information if its disclosure would be contrary to the employer's interests.
- 22.4** The employer must promptly consider any matters raised by the employees or their representatives about the changes in the course of the discussion under clause 22.1(b).
- 22.5** In clause 22:
- significant effects**, on employees, includes any of the following:

- (a) termination of employment; or
- (b) major changes in the composition, operation or size of the employer's workforce or in the skills required; or
- (c) loss of, or reduction in, job or promotion opportunities; or
- (d) loss of, or reduction in, job tenure; or
- (e) alteration of hours of work; or
- (f) the need for employees to be retrained or transferred to other work or locations; or
- (g) job restructuring.

22.6 Where this award makes provision for alteration of any of the matters defined at clause 22.5, such alteration is taken not to have significant effect.

22A. Consultation about changes to rosters or hours of work

Clause 22A inserted in accordance with [PR610215](#).

- 22A.1** Clause 22A applies if an employer proposes to change the regular roster or ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic or unpredictable.
- 22A.2** The employer must consult with any employees affected by the proposed change and their representatives (if any).
- 22A.3** For the purpose of the consultation, the employer must:
- (a) provide to the employees and representatives mentioned in clause 22A.2 information about the proposed change (for example, information about the nature of the change and when it is to begin); and
 - (b) invite the employees to give their views about the impact of the proposed change on them (including any impact on their family or caring responsibilities) and also invite their representative (if any) to give their views about that impact.
- 22A.4** The employer must consider any views given under clause 22A.3(b).
- 22A.5** Clause 22A is to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.

23. Dispute resolution

Clause 23 substituted in accordance with [PR610215](#).

- 23.1** Clause 23 sets out the procedures to be followed if a dispute arises about a matter under this award or in relation to the [NES](#).

- 23.2** The parties to the dispute must first try to resolve the dispute at the workplace through discussion between the employee or employees concerned and the relevant supervisor.
- 23.3** If the dispute is not resolved through discussion as mentioned in clause 23.2, the parties to the dispute must then try to resolve it in a timely manner at the workplace through discussion between the employee or employees concerned and more senior levels of management, as appropriate.
- 23.4** If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses 23.2 and 23.3, a party to the dispute may refer it to the Fair Work Commission.
- 23.5** The parties may agree on the process to be followed by the Fair Work Commission in dealing with the dispute, including mediation, conciliation and consent arbitration.
- 23.6** If the dispute remains unresolved, the Fair Work Commission may use any method of dispute resolution that it is permitted by the [Act](#) to use and that it considers appropriate for resolving the dispute.
- 23.7** A party to the dispute may appoint a person, organisation or association to support and/or represent them in any discussion or process under clause 23.
- 23.8** While procedures are being followed under clause 23 in relation to a dispute:
- (a) work must continue in accordance with this award and the [Act](#); and
 - (b) an employee must not unreasonably fail to comply with any direction given by the employer about performing work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.
- 23.9** Clause 23.8 is subject to any applicable work health and safety legislation.

Schedule A—Summary of Hourly Rates of Pay

Monetary amounts in this clause adjusted as a result of AWR 2018.

NOTE: Employers who meet their obligations under this schedule are meeting their obligations under the award.

A.1 Ordinary hourly rate

A.1.1 Ordinary hourly rate is the minimum hourly rate of pay for an employee plus any allowance payable for all purposes to which the employee is entitled. Where an allowance is payable for all purposes in accordance with clause 10.1(a), this forms part of the employee’s ordinary hourly rate and must be added to the minimum hourly rate prior to calculating penalties and overtime.

A.1.2 The rates in the tables below are based on the **minimum hourly rates** in accordance with clause 9.1. Consistent with clause A.1.1, all purpose allowances need to be added to the rates in the table where they are applicable.

A.2 Full-time and part-time employees

A.2.1 Full-time and part-time employees other than shiftworkers—ordinary and penalty rates

	Ordinary hours	Saturday	Sunday	Public holiday
	% of ordinary hourly rate ¹			
	100%	150%	200%	250%
	\$	\$	\$	\$
Master	25.81	38.72	51.62	64.53
Mate	24.58	36.87	49.16	61.45
Engineer	24.58	36.87	49.16	61.45
General Purpose Hand, Deckhand, Greaser, Passenger Attendant, Turnstile Attendant, Boating Attendant, Host, Fireman, Trimmer, Linesman, Cook, Sailor, Able Seaman, Leading Hand	23.27	34.91	46.54	58.18
Shipkeeper	21.33	32.00	42.66	53.33
Crane Driver (under 20 tonnes)	21.71	32.57	43.42	54.28
Crane Driver (over 20 tonnes)	23.90	35.85	47.80	59.75

¹Rates in table are calculated based on the minimum hourly rate, see clauses A.1.1 and A.1.2.

A.2.2 Full-time and part-time shiftworkers—ordinary and penalty rates

	Afternoon	Night	Permanent night	Saturday	Sunday	Public holiday
	% of ordinary hourly rate ¹					
	115%	115%	130%	150%	200%	250%
	\$	\$	\$	\$	\$	\$
Master	29.68	29.68	33.55	38.72	51.62	64.53
Mate	28.27	28.27	31.95	36.87	49.16	61.45
Engineer	28.27	28.27	31.95	36.87	49.16	61.45
General Purpose Hand, Deckhand, Greaser, Passenger Attendant, Turnstile Attendant, Boating Attendant, Host, Fireman, Trimmer, Linesman, Cook, Sailor, Able Seaman, Leading Hand	26.76	26.76	30.25	34.91	46.54	58.18
Shipkeeper	24.53	24.53	27.73	32.00	42.66	53.33
Crane Driver (under 20 tonnes)	24.97	24.97	28.22	32.57	43.42	54.28
Crane Driver (over 20 tonnes)	27.49	27.49	31.07	35.85	47.80	59.75

¹Rates in table are calculated based on the minimum hourly rate, see clauses A.1.1 and A.1.2.

A.3 Casual employees

A.3.1 Casual employees other than shiftworkers—ordinary and penalty rates

	Ordinary hours	Saturday	Sunday	Public holiday
	% of ordinary hourly rate ¹			
	125%	150%	200%	250%
	\$	\$	\$	\$
Master	32.26	38.72	51.62	64.53
Mate	30.73	36.87	49.16	61.45
Engineer	30.73	36.87	49.16	61.45
General Purpose Hand, Deckhand, Greaser, Passenger Attendant, Turnstile Attendant, Boating Attendant, Host, Fireman, Trimmer, Linesman, Cook, Sailor, Able Seaman, Leading Hand	29.09	34.91	46.54	58.18
Shipkeeper	26.66	32.00	42.66	53.33

	Ordinary hours	Saturday	Sunday	Public holiday
	% of ordinary hourly rate ¹			
	125%	150%	200%	250%
	\$	\$	\$	\$
Crane Driver (under 20 tonnes)	27.14	32.57	43.42	54.28
Crane Driver (over 20 tonnes)	29.88	35.85	47.80	59.75

¹Rates in table are calculated based on the minimum hourly rate, see clauses A.1.1 and A.1.2.

A.3.2 Casual shiftworkers—ordinary and penalty rates

	Afternoon	Night	Permanent night	Saturday	Sunday	Public holiday
	% of ordinary hourly rate ¹					
	140%	140%	155%	150%	200%	250%
	\$	\$	\$	\$	\$	\$
Master	36.13	36.13	40.01	38.72	51.62	64.53
Mate	34.41	34.41	38.10	36.87	49.16	61.45
Engineer	34.41	34.41	38.10	36.87	49.16	61.45
General Purpose Hand, Deckhand, Greaser, Passenger Attendant, Turnstile Attendant, Boating Attendant, Host, Fireman, Trimmer, Linesman, Cook, Sailor, Able Seaman, Leading Hand	32.58	32.58	36.07	34.91	46.54	58.18
Shipkeeper	29.86	29.86	33.06	32.00	42.66	53.33
Crane Driver (under 20 tonnes)	30.39	30.39	33.65	32.57	43.42	54.28
Crane Driver (over 20 tonnes)	33.46	33.46	37.05	35.85	47.80	59.75

¹Rates in table are calculated based on the minimum hourly rate, see clauses A.1.1 and A.1.2.

Schedule B—Summary of Monetary Allowances

Clauses B.1.1, B.2.1 and B.2.2 amended by AMOD as a consequence of amendments at clauses 10.2(d) and 10.2(k) in accordance with [\[2018\] FWCFB 1405](#) at [293].

Monetary amounts in this clause adjusted as a result of AWR 2018.

See clause 10—Allowances for full details of allowances payable under this award.

B.1 Wage-related allowances

B.1.1 The following wage-related allowances are based on the weekly standard rate defined in Schedule G—Definitions as the minimum weekly rate for a General Purpose Hand in clause 9.1 = **\$884.10**. These rates are to be paid in accordance with clause 10.1:

Allowance	Clause	% of standard rate \$884.10	\$ per week (unless otherwise stated)
Dual capacity allowance ¹	10.1(d)	0.58	5.13 per day or part thereof
Towing allowance—towing or carrying explosives ²	10.1(m)(i)	0.29	2.56 per day or part thereof
Towing allowance—towing non self-propelled bunker barges ³	10.1(m)(ii)	0.27	2.39 per day or part thereof
Distant work—relieving employee—week of seven days	10.1(c)(ii)	56.23	497.13
Distant work—relieving employee—broken parts of a week	10.1(c)(ii)	8.00	70.73 per day
Uniforms allowance	0	2.01	17.17
Compensation for loss of personal effect—maximum	0	210.3	Up to 1738.97 per occasion
Dirty or offensive work allowance	10.1(e)(i)	0.07	0.62 per hour
Dirty work allowance—work alongside vessels in discharging alumina, petroleum, coke etc.	10.1(e)(ii)	0.18	1.59 per hour
Wet work allowance	10.1(f)(i)	0.03	0.27 per hour
Unloading and loading garbage allowance	10.1(g)	0.07	0.62 per hour
Slipway etc. Allowance—junior employee	0	0.08	0.68 per hour
Bilge allowance	10.1(h)	0.11	0.97 per hour
Chipping hammers allowance	10.1(i)	0.01	0.09 per hour

Allowance	Clause	% of standard rate \$884.10	\$ per week(unless otherwise stated)
First aid allowance	10.1(j)	1.70	15.03
Loading and discharge of cargo and supplies:	10.1(k)		
Transporting passengers and cargo—week of five working days	10.1(k)(i)	2.99	26.43
Transporting passengers and cargo—working week in excess of five days—additional allowance	10.1(k)(i)	0.61	5.39 per day
Transporting cargo only	10.1(k)(ii)	5.23	46.24 per trip
Overnight cruises, one to six nights	10.1(k)(iii)	2.01	17.77 per trip
Overnight cruises, over six nights	10.1(k)(iv)	3.00	26.52 per trip
Waiting orders—telephone installed at home	10.1(l)(i)	16.51	145.96 per annum
Waiting orders—off-duty employee	10.1(l)(i)	0.42	3.71 per call
Special efforts allowance—ships stranded or wrecked or on fire	10.1(n)(i)	1.71	15.12 per hour
Loading for duties outside normal work	10.1(o)	0.55	4.86 per day
^{1, 2, 3} This allowance applies for all purposes			

B.1.2 Adjustment of wage-related allowances

Wage-related allowances are adjusted in accordance with increases to wages and are based on a percentage of the standard rate as specified.

B.2 Expense-related allowances

B.2.1 The following expense-related allowances will be payable to employees in accordance with clause 10.2:

Allowance	Clause	\$
<u>Compensation for loss of personal effects—maximum</u>	<u>10.2(d)</u>	<u>Up to 1859.26 per occasion</u>
Meal allowance—overtime in excess of one and a half hours	10.2(a)	16.62 per occasion
Meal allowances—further four hours of	10.2(a)	16.62 per

Allowance	Clause	\$
overtime		occasion
Transport allowance—own vehicle	10.2(g)(i)	0.78 per km
Transport allowance—own vehicle—travel to or from different starting or finishing point	10.2(g)(ii)	0.78 per km
<u>Uniforms allowance</u>	<u>10.2(k)</u>	<u>17.77</u>

B.2.2 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
<u>Compensation for loss of personal effects allowance</u>	<u>All groups</u>
Meal allowance	Take away and fast foods sub-group
<u>Uniforms allowance</u>	<u>Clothing and footwear group</u>
Vehicle allowance	Private motoring sub-group

B.3 Other allowances

The following other allowances will be payable to employees in accordance with clause 10:

Allowance	Clause	Payment detail
Towing allowance—vessels proceeding beyond limits of harbour, river or bay	10.1(m)(iii)	25% of the employee's normal wage per day (minimum payment for four hours)

Schedule C—Agreement for Time Off Instead of Payment for Overtime

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

Name of employee: _____

Name of employer: _____

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

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

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

Amount of overtime worked: _____ hours and _____ minutes

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

Signature of employee: _____

Date signed: ___/___/20___

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ___/___/20___

Schedule D—Agreement to Take Annual Leave in Advance

Link to PDF copy of [Agreement to Take Annual Leave in Advance](#).

Name of employee: _____

Name of employer: _____

The employer and employee agree that the employee will take a period of paid annual leave before the employee has accrued an entitlement to the leave:

The amount of leave to be taken in advance is: ____ hours/days

The leave in advance will commence on: ____/____/20____

Signature of employee: _____

Date signed: ____/____/20____

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

[If the employee is under 18 years of age - include:]

I agree that:

if, on termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken under this agreement, then the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ____/____/20____

Schedule E—Agreement to Cash Out Annual Leave

Link to PDF copy of [Agreement to Cash Out Annual Leave](#).

Name of employee: _____

Name of employer: _____

The employer and employee agree to the employee cashing out a particular amount of the employee's accrued paid annual leave:

The amount of leave to be cashed out is: _____ hours/days

The payment to be made to the employee for the leave is: \$_____ subject to deduction of income tax/after deduction of income tax (strike out where not applicable)

The payment will be made to the employee on: ___/___/20___

Signature of employee: _____

Date signed: ___/___/20___

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ___/___/20___

Include if the employee is under 18 years of age:

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ___/___/20___

Schedule F—Part-day Public Holidays

Schedule F amended in accordance with [PR701683](#).

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

F.1 Where a part-day public holiday is declared or prescribed between 7.00 pm and midnight on Christmas Eve (24 December in each year) or New Year's Eve (31 December in each year) the following will apply on Christmas Eve and New Year's Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:

- (a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the [NES](#).
- (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 F.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 F.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.

- (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](#).

DRAFT

Schedule G—Definitions

Placement of the *definitions* to be determined by Plain Language Process. See [\[2017\] FWCFB 3433](#) at [333].

In this award, unless the contrary intention appears:

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

all purposes means the payment will be included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties or loadings or payment while they are on annual leave

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

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

employee means national system employee within the meaning of the [Act](#)

employer means national system employer within the meaning of the [Act](#)

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

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

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

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

ordinary hourly rate means the hourly rate for the employee's classification specified in clause 9, plus any allowances specified as being included in the employee's ordinary hourly rate or payable for all purposes

ports, harbours and enclosed water vessels industry has the meaning given in clause 3.2

standard rate means the minimum weekly rate for a General Purpose Hand in clause 9.1

Definition inserted in accordance with [PR598705](#).

wild catch fishing industry means the commercial operation of an employer to catch fish and other seafood that has grown to maturity in its natural environment. It does not include operations covered by the *Aquaculture Industry Award 20XX*.