

## **Marine Towage Award 2010**

The above award was first made on 4 September 2009 [[PR988694](#)]

This consolidated version of the award includes variations made on 15 December 2009 [[PR990820](#)]; 16 December 2009 [[PR991557](#)]; 12 March 2010 [[PR994461](#)]; 4 June 2010 [[PR997772](#)]; 21 June 2010 [[PR998175](#)]; 21 June 2010 [[PR997947](#)]; 6 December 2010 [[PR503669](#)]

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

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[Varied by [PR994461](#)]

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## **Part 1 - Application and Operation**

### **1. Title**

This award is the *Marine Towing Award 2010*.

### **2. Commencement and transitional**

**2.1** This award commences on 1 January 2010.

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

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

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

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

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

**2.6** Fair Work Australia may review the transitional arrangements:

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

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

### 3. Definitions and interpretation

[Varied by [PR994461](#), PR997772, PR503669]

3.1 In this award, unless the contrary intention appears:

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

[Definition of agreement-based transitional instrument inserted by [PR994461](#) from 01Jan10]

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

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

**contract towage** means when a tug is towing a vessel from one location to another location, where that tow or other services of a non-emergency nature has been contracted for and pre-planned by the employer

[Definition of **Division 2B State award** inserted by PR503669 ppc 01Jan11]

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

[Definition of **Division 2B State employment agreement** inserted by PR503669 ppc 01Jan11]

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

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

**employee** means national system employee within the meaning of the Act

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

**employer** means national system employer within the meaning of the Act

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

**free running voyage** and **delivery voyage** means when a tug proceeds from one port to another either interstate or intrastate and is not engaged in towing between ports or on a nominated voyage. In addition, this definition will apply to a tug

proceeding from its home port to another port to commence a contract tow or when returning to its home port on completion of a contract tow

**hourly rate** means 1/35th of the minimum weekly rate

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

**officer** means a master, a mate or engineer of a tug

[Definition of on-hire inserted by PR994461 from 01Jan10]

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

**outside work** means work on a tug which proceeds to sea on a special voyage outside the limits of bays, rivers or regulated port boundaries or limits but within Australian territorial waters

**special voyage** means a voyage for which it is necessary to set watches and will include a free running voyage and delivery voyage, contract towage or emergency operations, but does not include a nominated voyage

**standard rate** means the minimum weekly rate for the classification of Rating in clause 13.1

**tonnage** means the sum of the gross registered tonnage figure of a tug and of the brake horse power figure of the main engine(s) only of the tug (including super charged power where applicable)

[Definition of **transitional minimum wage instrument** inserted by PR994461 from 01Jan10]

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

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

#### **4. Coverage**

[Varied by PR994461]

**4.1** This industry award covers employers throughout Australia in the marine towage industry and their employees in the classifications listed in clause 13.1 to the exclusion of any other modern award. The award does not cover employers and employees wholly or substantially covered by the following awards:

(a) the *Maritime Offshore Oil and Gas Award 2010*;

- (b) the *Ports, Harbours and Enclosed Water Vessels Award 2010*;
- (c) the *Dredging Industry Award 2010*; and
- (d) the *Seagoing Industry Award 2010*.

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

- (a) the *Manufacturing and Associated Industries and Occupations Award 2010*; or
- (b) the *Electrical, Electronic and Communications Contracting Award 2010*.

#### 4.3 **Definition of marine towage industry**

**Marine towage industry** means:

- (a) any work on tug boats, in conjunction with ship-assist operations and voyages, at or about, or to or from, a port in Australia (**harbour towage operations**);
- (b) movement of contract cargoes by combined tug and barge (up to a maximum of 10,000 tonnes) between different ports or locations in Australia (**tug and barge operations**).

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

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

[New 4.6 and 4.7 inserted by PR994461 from 01Jan10]

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

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

[4.6 renumbered as 4.8 by PR994461 from 01Jan10]

**4.8** 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.

## **5. Access to the award and the National Employment Standards**

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

## **6. The National Employment Standards and this award**

The NES and this award contain the minimum conditions of employment for employees covered by this award.

## **7. Award flexibility**

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

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

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

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

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

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

**(a)** be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;

**(b)** state each term of this award that the employer and the individual employee have agreed to vary;

**(c)** detail how the application of each term has been varied by agreement between the employer and the individual employee;

**(d)** detail how the agreement results in the individual employee being better off overall in relation to the individual employee's terms and conditions of employment; and

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

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

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

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

**7.8** The agreement may be terminated:

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

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

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

## **Part 2 - Consultation and Dispute Resolution**

### **8. Consultation regarding major workplace change**

## **8.1 Employer to notify**

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

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

## **8.2 Employer to discuss change**

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

**(b)** The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 8.1.

**(c)** For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives, if any, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that no employer is required to disclose confidential information the disclosure of which would be contrary to the employer's interests.

## **9. Dispute resolution**

**9.1** In the event of a dispute about a matter under this award, or a dispute in relation to the NES, in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.

**9.2** If a dispute about a matter arising under this award or a dispute in relation to the NES is unable to be resolved at the workplace, and all appropriate

steps under clause 9.1 have been taken, a party to the dispute may refer the dispute to Fair Work Australia.

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

**9.4** Where the matter in dispute remains unresolved, Fair Work Australia may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute.

**9.5** An employer or employee may appoint another person, organisation or association to accompany and or represent them for the purposes of this clause.

**9.6** While the dispute resolution procedure is being conducted, work must continue in accordance with this award and the Act. Subject to applicable occupational health and safety legislation, an employee must not unreasonably fail to comply with a direction by the employer to perform work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

### **Part 3 - Types of Employment and Termination of Employment**

#### **10. Types of employment**

An employee may be engaged on a full-time, part-time or casual basis.

##### **10.1 Full-time employment**

A full-time employee is an employee who is engaged to work an average of 35 ordinary hours per week.

##### **10.2 Part-time employment**

**(a)** A part-time employee is an employee who:

**(i)** is engaged to work ordinary hours which are less than the average number of ordinary hours of a full-time employee; and

**(ii)** receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.

**(b)** For each ordinary hour worked, a part-time employee will be paid not less than the hourly rate of pay for the relevant classification in clause 13.1.

**(c)** Before an employee commences part-time employment, an employer must inform the employee in writing of any rostered periods of duty to be worked by the employee.

(d) Any agreed variation of the rostered periods of duty must be recorded in writing.

### **10.3 Casual employment**

A casual employee is one engaged and paid as such.

## **11. Termination of employment**

11.1 Notice of termination is provided for in the NES.

### **11.2 Notice of termination by employer - permanent employees**

(a) Notwithstanding the terms of the NES, in order to terminate the employment of an officer the employer must give to the employee the following written notice:

<b>Period of continuous service</b>	<b>Period of notice</b>
1 year or less	2 weeks
More than 1 year but less than 4 years	6 weeks
More than 4 years	8 weeks

(b) Payment instead of the notice prescribed in clause 11.2 may be made.

(c) An employer may terminate an employee's employment by giving part of the notice prescribed in clause 11.2 and part payment instead thereof.

(d) In calculating any payment instead of notice, the wages an employee would have received in respect of ordinary time the employee would have worked during the period of notice if the employee's employment had not been terminated must be used.

### **11.3 Job search entitlement**

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

### **11.4 Return to place of engagement**

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

## **11.5 Termination without notice**

Despite the above provisions, an employer may terminate an employee's employment without notice, or payment instead of notice, for misconduct.

## **11.6 Notice of termination - permanent employees**

**(a)** An employee may terminate their employment by giving the employer the following notice in writing:

**(i)** in the case of officers, two week's notice; or

**(ii)** in the case of ratings, one week's notice.

**(b)** If an employee fails to give the required notice, the employer may withhold money due to the employee an amount not exceeding the amount the employee would have been paid under this award in respect of the period of notice required by this clause less any period of notice actually given by the employee.

## **11.7 Casual employees**

The employment of a casual employee terminates at the end of each period of duty.

## **12. Redundancy**

**12.1** Redundancy pay is provided for in the NES.

### **12.2 Transfer to lower paid duties**

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

### **12.3 Employee leaving during notice period**

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

### **12.4 Job search entitlement**

**(a)** An employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.

**(b)** If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose a statutory declaration is sufficient.

**(c)** This entitlement applies instead of clause 11.3.

## **Part 4 - Minimum Wages and Related Matters**

### **13. Minimum wages**

[Varied by PR997947]

#### **13.1 Minimum wages**

[13.1 varied by PR997947 ppc 01Jul10]

The minimum wage rates for each classification will be as follows:

<b>Classification</b>	<b>Minimum rate</b>	
	<b>Daily</b>	<b>Weekly</b>
	<b>\$</b>	<b>\$</b>
Rating and General Purpose Rating	92.85	650.00
<b><i>Category 1 (0-1850 tonnage)</i></b>		
Mate	105.51	738.60
Master and Engineer	126.64	886.50
<b><i>Category 2 (1850 or more tonnage)</i></b>		
Mate	110.24	771.70
Master and Engineer	133.49	934.40

#### **13.2 Option for aggregate wage or annual salary - full-time and part-time employees**

**(a)** As an alternative to being paid the minimum wage rate plus overtime and penalty payments (in accordance with clauses 22 and 26.2), an employer may agree to pay an aggregate wage or annual salary provided the employer obtains the agreement of a majority of its employees who are covered by this award.

**(b)** The aggregate wage or annual salary paid by the employer to employees must be based on a rate equivalent to an aggregate wage or annual salary of at least 40% above the minimum wage rate prescribed in clause 13.1.

**(c)** An employer will not be required to pay overtime and penalty payments provided that the aggregate wage or annual salary paid over the year was sufficient to cover what the employee would have been entitled to if the minimum wage rate plus overtime and penalty payments (as identified above) had been paid in that year.

**(d)** Where payment is adopted in accordance with this clause 13.2, the employer will keep a daily record of the hours worked by the employees which will show the daily date and start and finishing times of the employees. The record will be countersigned by the employee fortnightly, and will be kept at the place of employment for six years.

### **13.3 Casual rates of pay**

**(a)** For each hour worked, a casual employee will be paid no less than the hourly rate of pay for their classification in clause 13.1, plus a casual loading of 25%.

**(b)** The casual loading is paid instead of annual leave, personal/carer's leave, notice of termination, redundancy benefits and the other attributes of full-time or part-time employment.

### **13.4 Special voyages in harbour towage operations - rates of pay**

#### **(a) Application**

**(i)** Clause 13.4 applies to employers operating in, and employees working in, harbour towage operations.

**(ii)** Clause 13.4 does not apply to an employee who is regularly or continuously engaged on outside work.

**(iii)** The payments in clause 13.4(b) are payable instead of the daily minimum wage rate specified in clause 13.1 (including clause 13.2), and the payments and penalties for working overtime under clause 20.2;

**(iv)** The payments in clause 13.4(b) do not apply to employees on a nominated voyage.

#### **(b) Payment for special voyages**

[13.4(b)(i) varied by PR997947 ppc 01Jul10]

**(i)** For any day (including Saturdays, Sundays and public holidays) on which an employee is engaged on outside work an employee will be entitled to the amount set out in the table below for their classification.

<b>Voyage / Rank</b>	<b>Minimum</b>	<b>Residual</b>	<b>Total rate</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
<b><i>Free Running Voyage and Delivery Voyage</i></b>			
General Purpose Rating	364.70	0.00	364.70
Mate (Casual or Tug Mate)	435.20	0.00	435.20
Mate (Permanent Tug Master) and Engineer	532.00	0.00	532.00
Master and Chief Engineer	564.20	0.00	564.20
<b><i>Contract Towing</i></b>			
General Purpose Rating	488.40	0.00	488.40
Mate (Casual or Tug Mate)	559.00	0.00	559.00
Mate (Permanent Tug Master) and Engineer	655.60	0.00	655.60
Master and Chief Engineer	684.90	1.20	686.10
<b><i>Emergency Towing Operations</i></b>			
General Purpose Rating	612.10	0.00	612.10
Mate (Casual or Tug Mate)	682.90	1.10	684.00
Mate (Permanent Tug Master) and Engineer	780.10	6.10	786.20
Master and Chief Engineer	816.00	9.00	825.00

**(ii)** The amounts contained in clause 13.4(b)(i) will only be payable from the time that the tug leaves the wharf to proceed to sea on any special voyage until it ties up at the wharf at the termination of such special voyage.

**(iii)** The amounts contained in clause 13.4(b)(i) are all inclusive and the total amount payable to an employee for all outside work performed in each 24 hours (midnight to midnight) or part thereof.

**(iv)** Free running and contract voyages rates of pay will apply to each leg. The calculation for the first day's pay will commence when the vessel departs the wharf. The daily rate of pay will apply for the first day. If the voyage exceeds 24

hours, employees will be entitled to eight hours pay, at the hourly rate, for each period or part period of eight hours worked.

**(v)** On any day on which an employee is put ashore sick or injured, they are entitled to the employee's daily minimum wage rate, for each period or part period of eight hours worked on that day.

**(vi)** A casual employee engaged on a special voyage will be paid the higher of:

- the casual rate of pay under clause 13.3; or
- the rate of pay payable to other employees of the same classification in respect of the special voyage, including any entitlement to proportionate leave. In this latter case, casual loading will be absorbed in the payment.

**(vii)** A rest period may be given in the out-port depending on the circumstances of the voyage. In the case of a voyage of seven days or more, the maximum rest period will be 24 hours. In the case of a voyage of less than seven days, the rest period will be determined by the circumstances of the voyage and by discussion between the employer and employees.

#### **14. Allowances - Harbour towage operations**

[Varied by [PR994461](#), PR998175]

The allowances in this clause only apply to employers operating in, and employees working in, harbour towage operations.

##### **14.1 Allowances for disabilities associated with the performance of particular tasks or work in particular conditions or locations**

###### **(a) Nominated voyages allowance**

**(i)** A **nominated voyage** means an intrastate tug voyage from one port to another that is undertaken for operational reasons, to cover towage requirements in the other port.

**(ii)** For each hour during which an employee is engaged on a nominated voyage, the employee will be paid an allowance equal to 2.46% of the standard rate.

###### **(b) Cyclone (shipkeeping) allowance**

For each hour (including during Saturdays, Sundays and public holidays) on which an employee is on board a tug in port and available for the performance of any duty during a cyclone or cyclone alert an employee will be paid an allowance equal to 1.96% of the standard rate.

###### **(c) Emergency maintenance allowance**

(i) In this clause 14.1(c), **emergency maintenance** means work which is necessary to reinstate into service a tug which would otherwise be out of service.

(ii) An employee who at the request of the employer is required to perform emergency maintenance work on board a tug outside the span of ordinary hours, will be paid an allowance as set out in the table below.

<b>Category</b>	<b>% of standard rate per hour</b>
General Purpose Rating	6.62
<b>Category 1 (0-1850 tonnage)</b>	
Mate	8.25
Master and Engineer	10.51
<b>Category 2 (1850 or more tonnage)</b>	
Mate	7.60
Master and Engineer	10.96

**(d) Area and port-based allowances**

(i) In this clause 14.1(d), an area and port-based allowance refers to the following allowances prescribed in the *Tugboat Industry Award 1999*, made under the *Workplace Relations Act 1996* (Cth):

- payments for work outside port limits;
- area and port allowances; and
- resumption of duty allowance.

(ii) An employee is entitled to payment of an area and port-based allowance in accordance with the terms of the *Tugboat Industry Award 1999*, made under the *Workplace Relations Act 1996* (Cth):

- that would have applied to the employee immediately prior to 1 January 2010, if the employee had at that time been in their current circumstances of employment and no agreement made under the *Workplace Relations Act 1996* (Cth) had applied to the employee; and
- that would have entitled the employee to payment of the area and port-based allowance under clauses 9.5, 9.8, 12.10 and 12.11 of that award.

**(iii)** Clause 14.1(d) ceases to operate on 31 December 2014.

## **14.2 Reimbursement and expense related allowances**

### **(a) Industrial and protective clothing**

**(i)** For each employee covered by this award who is required to wear industrial or protective clothing and equipment as stipulated by a relevant law or by the employer, the employer must reimburse the employee for the full cost of purchasing the industrial or protective clothing and equipment. The provisions of this subclause do not apply where the industrial or protective clothing and equipment is, or has been, paid for or provided by the employer and the employer replaces items on a fair wear and tear basis.

**(ii)** Employees will be paid an allowance of \$51.60 per annum towards the purchase of sunglasses for use during work.

**(iii)** Employees are responsible for the safekeeping on board the vessel of each item of protective clothing.

**(iv)** An employer may require an employee to sign a receipt for the issue of such clothing and equipment.

### **(b) Meal allowance**

[14.2(b) substituted by PR998175 ppc 01Jul10]

Each employee will receive a meal allowance of \$11.93 for each day worked, provided that an allowance is not required to be paid if the employer provides a meal or meal-making facilities.

### **(c) Telephone allowance**

[14.2(c)(i) substituted by PR998175 ppc 01Jul10]

**(i)** An employee who is required by their employer to telephone for orders will be entitled to be reimbursed an amount of \$159.61 per annum.

**(ii)** The employer will reimburse full installation costs of a new service and pay transfer costs on one occasion during an employee's period of service.

### **(d) Loss of personal effects allowance**

If by fire, explosion, foundering, shipwreck, collision or stranding, an employee sustains damage to or loss of their personal effects or equipment, the employer will compensate the employee for such damage or loss by a payment equivalent to the value thereof to a maximum of \$1754 (or \$2799 if the damage or loss occurs on outside work). The maximum payable for any one article is limited to \$466.80.

### **(e) Insurance allowance**

**(i) Outside work**

An employee who is engaged on outside work by an employer (other than an employee regularly or continuously engaged on outside work) is entitled to be paid by the employer an annual allowance equal to the annual premium paid by the employee to obtain a policy of insurance, approved in advance by the employer, which provides a benefit to the employee of \$100,000 upon their death whilst engaged on outside work.

This clause does not apply where the employee's employer maintains an insurance policy, or self-insures, in order to provide a benefit to the employee of \$100,000 upon their death whilst engaged on outside work.

**(ii) Fire fighting insurance**

In this clause 14.2(e)(ii), total and permanent disability means incapacitation to the following extent:

- the loss of two limbs (where limbs include the whole of one hand or the whole of one foot) or the sight of both eyes or the loss of one limb and the sight of one eye; or
- after a period of six consecutive months continuous absence from their employment on account of injury which is proved to the satisfaction of the insurer (after considering such medical or other evidence or advice as they may require from time to time) the employee is unable or unlikely ever again to be able to undertake any form of remunerative work for which they are reasonably fitted by education or training or experience.

An employee who is engaged in fire fighting by an employer is entitled to be paid by the employer an allowance equal to the annual premium paid by the employee to obtain a policy of insurance, approved in advance by the employer, which provides a benefit to the employee of \$130,000 in the case of death or total and permanent disability caused by bodily injury of the employee whilst engaged in fire fighting. This subclause does not apply if the employee's employer maintains an insurance policy, or self-insures, in order to provide a benefit to the employee of \$130,000 in the case of death or total and permanent disability caused by bodily injury of the employee whilst engaged in fire fighting.

**(f) Victualling and accommodation allowance in out-ports**

[14.2(f)(i) substituted by PR998175 ppc 01Jul10]

**(i)** Where an employee is not at their home port and is required to eat and/or sleep ashore the following allowances will be payable:

**Allowance**

	\$
Breakfast	13.22
Lunch	15.48
Dinner	24.94
Accommodation	72.41
Total daily allowance	126.05

**(ii)** An employee will only be entitled to the accommodation allowance if:

- the place at which the employee sleeps is not their usual place of residence; and
- the employee produces evidence to the reasonable satisfaction of the employer that the employee has properly incurred expenditure on the provision of accommodation for themselves for the night or nights in question.

**(iii)** In the case of casual employees, the provisions of this clause only apply if the casual employee is engaged to perform work on a vessel at a port which is not the home port of the permanent employees in the vessel's crew.

**(g) Travelling allowance**

**(i)** This clause 14.2(g) applies where an employee is either travelling from their home port to another port at the direction of the employer or travelling to their home port from another port at the direction of the employer.

**(ii)** This clause 14.2(g) does not apply if the employer provides and or pays for the cost of transport.

**(iii)** The employer will reimburse the employee for the reasonable cost of the transport required by the employer to be used.

**(iv)** Unless the employee is in receipt of an aggregate wage or annual salary pursuant to clause 13.2, time spent travelling under this clause 14.2(g) will be considered as time worked. In the case of an employee who is in receipt of an aggregate wage or annual salary pursuant to clause 13.2, no additional payment is payable for time spent travelling.

**(h) Port-based travel allowances - transitional arrangements**

[14.2(h)(i) substituted by [PR994461](#) from 01Jan10]

**(i)** An employee is entitled to payment of a port-based travelling allowance in accordance with the terms of the *Tugboat Industry Award 1999*, made under the *Workplace Relations Act 1996* (Cth):

· that would have applied to the employee immediately prior to 1 January 2010, if the employee had at that time been in their current circumstances of employment and no agreement-based transitional instrument or enterprise agreement had applied to the employee; and

· that would have entitled the employee to payment of the port-based travelling allowance under clauses 9.5 and 12.8 and Table 2 of that award.

**(ii)** This clause 14.2(h)(i) ceases to operate on 31 December 2014.

**(iii)** During this transitional period an employee is not entitled to payment of both the port-based travelling allowance and the travelling allowance under clause 14.2(g). The employee must be paid whichever allowance is the greater.

**(i) Expenses**

**(i)** The employer will reimburse an employee for any expenses reasonably incurred by the employee in the performance of their duties on behalf of the employer. Wherever possible, in order to be reimbursed the employee must seek the pre-approval of the employer to undertake the expense.

**(ii)** As well as to other matters, this clause will apply to enquiries as to casualties or as to the conduct of employees and to proceedings for any alleged breach of any maritime or port or other regulations, unless the authority conducting the enquiry or proceedings finds that such enquiry or proceedings have been occasioned by the default or misconduct of the employee or, in the event of an appeal there from, the appellate tribunal finds that such enquiry or proceedings have been occasioned by the default or misconduct of the employee.

**14.3 Adjustment of expense related allowances**

**(a)** At the time of any adjustment to the standard rate, each expense related allowance in clause 14.2 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.

[14.3(b) varied by PR994461 from 01Jan10]

**(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:

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

<b>Allowance</b>	<b>Applicable Consumer Price Index figure</b>
Industrial and protective clothing	Clothing and footwear group
Telephone allowance	Telecommunication sub-group
Loss of personal effects allowance	Household appliances, utensils and tools sub-group
Victualling and accommodation allowance in out-ports	All groups

## **15. District allowances**

[Varied by [PR994461](#)]

### **15.1 Northern Territory**

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

[15.1(a) substituted by [PR994461](#) from 01Jan10]

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

### **15.2 Western Australia**

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

[15.2(a) substituted by [PR994461](#) from 01Jan10]

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

**15.3** This clause ceases to operate on 31 December 2014.

## **16. Allowances - Tug and barge operations**

The allowances in this clause 16 only apply to employers operating in, and employees working in, tug and barge operations.

### **16.1 Allowances for disabilities associated with the performance of particular tasks or work in particular conditions or locations**

#### **(a) Multiple tow allowance**

(i) The following allowances will be paid where a vessel engages in a multiple tow for each day the vessel is at sea, in port or anchored from the time the tow is assigned until the time the vessel is berthed at its final destination.

<b>Classification</b>	<b>% of standard rate per day</b>
Engineer, Mate and General Purpose Rating	5.91
Master and Chief Engineer	11.69

(ii) On a changeover day the employees joining the vessel will be entitled to this allowance, which will not be payable to employees proceeding on leave.

#### **(b) Cooking allowance**

<b>Classification</b>	<b>% of standard rate per week</b>
Rating and General Purpose Rating acting as Cook	4.17

#### **(c) Additional skills allowance**

<b>Classification</b>	<b>% of standard rate per week</b>
Rating and General Purpose Rating holding qualifications as a Crane Driver, Able Seaman or Offshore Watch-keeper	12.51

### **16.2 Reimbursement and expense related allowances**

#### **(a) Industrial and protective clothing**

Clause 14.2(a) applies.

#### **(b) Loss of personal effects allowance**

Clause 14.2(d) applies.

**(c) Meals and accommodation**

Clause 14.2(f) applies.

**(d) Travelling allowance**

Clause 14.2(g) applies.

**(e) Expenses**

Clause 14.2(i) applies.

**16.3 Method of adjusting expense related allowances**

Clause 14.3 applies in relation to the allowances under clause 16.2.

**16.4 Medicals and passport allowances**

The employer will pay an allowance to the employee equal to the cost of any medical examination, eyesight or hearing test, passport (with associated vaccinations), visas, etc., required for the purpose of revalidating certificates of competency or as required by the employer.

**17. Accident pay**

[Varied by [PR994461](#), PR503669]

[17.1 varied by [PR994461](#); substituted by PR503669 ppc 01Jan11]

**17.1** Subject to clause 17.2, an employee is entitled to accident pay in accordance with the terms of an award made under the *Workplace Relations Act 1996* (Cth) that would have applied to the employee immediately prior to 27 March 2006, a notional agreement preserving a State award that would have applied to the employee immediately prior to 1 January 2010 or a Division 2B State award that would have applied to the employee immediately prior to 1 January 2011:

**(a)** if the employee had at that time been in their current circumstances of employment and no agreement-based transitional instrument, enterprise agreement or Division 2B State employment agreement had applied to the employee; and

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

[17.2 substituted by PR503669 ppc 01Jan11]

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

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

**17.4** This clause ceases to operate on 31 December 2014.

**18. Payment of wages**

[18.1 varied by PR994461 from 01Jan10]

**18.1** The employer will pay the employee's wages, penalties and allowances fortnightly in arrears by electronic funds transfer into the employee's bank (or other recognised financial institution) account nominated by the employee.

**18.2** An employer may deduct from any amount required to be paid to an employee under this clause the amount of any overpayment of wages or allowances.

**19. Superannuation**

[Varied by PR994461]

**19.1 Superannuation legislation**

**(a)** Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth), deals with the superannuation rights and obligations of employers and employees. Under superannuation legislation individual employees generally have the opportunity to choose their own superannuation fund. If an employee does not choose a superannuation fund, any superannuation fund nominated in the award covering the employee applies.

**(b)** The rights and obligations in these clauses supplement those in superannuation legislation.

**19.2 Employer contributions**

An employer must make such superannuation contributions to a superannuation fund for the benefit of an employee as will avoid the employer being required to pay the superannuation guarantee charge under superannuation legislation with respect to that employee.

**19.3 Voluntary employee contributions**

**(a)** Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 19.2.

**(b)** An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.

**(c)** The employer must pay the amount authorised under clauses 19.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 19.3(a) or (b) was made.

#### **19.4 Superannuation fund**

[19.4 varied by PR994461 from 01Jan10]

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

**(a)** Maritime Super;

**(b)** AMP Superannuation Savings Trust;

**(c)** Sunsuper;

**(d)** GESB; or

**(e)** any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund is an eligible choice fund.

### **Part 5 - Hours of Work and Related Matters**

#### **20. Hours of work and rostering**

##### **20.1 Ordinary hours of work**

For the purposes of the NES, the ordinary hours of work for full-time employees will be 35 hours per week, which may be averaged over a period of up to one year, and are given effect to in the manner provided under clause 23.2(c)(iv).

##### **20.2 Span of hours**

The span of hours in which ordinary hours may be worked will be between the hours of 0700 and 1700. An employer may agree with a majority of affected employees in a port to alter this spread of hours.

##### **20.3 Maximum hours of work**

**(a)** No employee will be required to perform work continuously in excess of 16 hours, except as provided in clause 20.3(b). An employee's continuity of work is not broken by meal breaks taken pursuant to clause 21 - Breaks and any other authorised period off duty of less than four hours duration.

**(b)** An employer may require an employee to perform work continuously in excess of 16 hours (extended hours) where:

**(i)** it is reasonably necessary to meet operational requirements;

**(ii)** the employer endeavours to terminate the period of continuous work as soon as practicable; and

**(iii)** the employer grants the employee a rest period of no less than 10 hours before requiring the employee to resume duty.

## **21. Breaks**

### **21.1 Meal breaks**

**(a)** An employee is entitled to a meal break of not less than 30 minutes after every five hours worked.

**(b)** Breaks will be scheduled by the employee's supervisor based upon operational requirements so as to ensure continuity of operations. The employer will not require an employee to work more than five hours before the first meal is taken or between subsequent meal breaks if any.

### **21.2 Minimum breaks**

**(a)** No break in duty will be of less than six hours duration from the time the employee is relieved from work. In computing a break of duty in relation to this subclause time off duty before the ordinary finishing time of the day up to 1600 hours will not count except on Saturdays, Sunday and public holidays.

**(b)** An employee who is required to resume duty after the ordinary finishing time of the day, when possible, will be given details of the work expected to be done up to and including the ordinary starting time the next day.

## **22. Overtime and penalty rates**

### **22.1 Payment for working overtime**

**(a)** Subject to any agreement pursuant to clause 13.2, the following payments will be made for working overtime:

**(i)** all time worked:

· in excess of the ordinary hours of duty, as specified in clause 20.1, or

· beyond the applicable span of hours under clause 20.2, must be paid for at the rate of time and one half for the first two hours and double time thereafter Monday to Friday;

(ii) on Saturday the rate of time and a half for the first two hours and double time thereafter with a minimum of four hours' payment; and

(iii) on Sunday the rate of double time with a minimum of four hours' payment.

## **22.2 Penalty rates - extended hours**

Subject to any agreement pursuant to clause 13.2, an employee who is required to perform work pursuant to clause 20.3(b) must be paid for such work at the rate of double the employee's hourly rate.

## **22.3 Calculating overtime and penalty rates**

(a) In calculating overtime payments under clause 22.1, and penalty rates under clause 22.2, any period:

(i) less than half an hour will be counted as half an hour; and

(ii) greater than half an hour but less than an hour will be counted as an hour.

(b) An employee who may have an entitlement under both clauses 22.1 and 22.2 will be paid whichever is the higher payment.

## **22.4 Resumption of duty**

(a) This clause 22.4 does not apply in any case where an employee is subject to an agreement in accordance with clause 13.2.

(b) When an employee who has ceased duty on any day is required thereafter to resume duty otherwise than in a consecutive extension before or after ordinary duty for the day, the employee will be entitled to a minimum payment of four hours for each resumption but, if the employee has to resume duty on two occasions during the hours between 1800 hours on the one day and 0500 hours on the following day will be entitled to a payment for the whole of the time from the commencement of the first to the termination of the last resumption.

(c) For each resumption of duty on any day under this clause 22.4, otherwise than in a consecutive extension before or after ordinary duty for the day, travelling time of up to one hour will be considered as time worked.

## **Part 6 - Leave and Public Holidays**

## **23. Annual leave**

**23.1** Clause 23 - Annual leave operates in conjunction with the NES. The provisions of this clause are intended to satisfy the provisions in the NES concerning maximum weekly hours of work, annual leave and public holidays.

### **23.2 Entitlement to leave**

**(a)** A permanent full-time employee will be entitled to 168 days free of duty in each year, or to proportionate leave for any continuous service of less than a year.

**(b)** A part-time employee's entitlement to days free of duty will be determined in accordance with clause 10.2.

**(c)** The leave prescribed in clause 23.2(a) above includes:

**(i)** 104 days of leave, being instead of weekends;

**(ii)** five weeks of paid annual leave for shiftworkers under the NES. Employees under this award are considered to be shiftworkers for the purposes of the NES;

**(iii)** public holiday entitlements under the NES; and

**(iv)** an additional 28 days' leave, to give effect to a 35 hour week.

**23.3** Employees will not be entitled to leave from duty under this clause 23 in relation to a period of absence from service on account of workers compensation, or leave without pay. An employee's leave entitlement under clause 23.1 will be debited by 0.857 of a day for each day of absence referred to in this clause.

**23.4** Employers will consult with their employees and prepare a roster providing for the taking of leave from duty. Where practicable, the roster should provide for predictability to the taking of 140 days of leave from duty in each year (or the proportion of the employee's entitlement to rostered leave days in a year that 140 bears to 168).

**23.5** Despite the provisions of this clause, the value of any leave given to the employee in advance will be deducted, upon termination of employment, from any money owing to an employee.

### **23.6 Continuous service**

For the purposes of clause 23, a permanent employee will be deemed to have served continuously for the aggregate of their service although the service may have been temporarily interrupted (by up to 21 days) by transfer to some other work of their employer, or for the convenience of the employer, or by suspension of operations, or the need to carry out repairs or maintenance on a tug that the employee is rostered to work on.

**24. Personal/carer's leave and compassionate leave**

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

**25. Community service leave**

Community service leave is provided for in the NES.

**26. Public holidays**

[Varied by PR994461]

**26.1** Employees are entitled to public holidays in accordance with the NES.

[26.2 substituted by PR994461 from 01Jan10]

**26.2** In ports where clause 13.2 is not invoked, employees required to work on any of the days specified in the NES will be paid:

**(a)** for all hours worked within ordinary hours at the rate of time and a half of the minimum wage for their classification; and

**(b)** outside ordinary hours at the rate of double time and a half of the minimum wage for their classification,

with a minimum payment of four hours.

**26.3** In ports where clause 13.2 is invoked, an agreement under clause 13.2 recognises that harbour towage operations require tugs to be available on any day of the year. Entitlements to public holidays under the NES are incorporated in the applicable port rosters developed under clause 23.4 and the aggregated entitlements to leave from duty.

**Schedule A - Transitional Provisions**

[Varied by PR503669]

**A.1 General**

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

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

**(a)** when there is a difference, in money or percentage terms, between a provision in a relevant transitional minimum wage instrument (including the transitional default casual loading) or award-based transitional instrument on the one hand and an equivalent provision in this award on the other;

**(b)** when a loading or penalty in a relevant transitional minimum wage instrument or award-based transitional instrument has no equivalent provision in this award;

**(c)** when a loading or penalty in this award has no equivalent provision in a relevant transitional minimum wage instrument or award-based transitional instrument; or

**(d)** when there is a loading or penalty in this award but there is no relevant transitional minimum wage instrument or award-based transitional instrument.

## **A.2 Minimum wages - existing minimum wage lower**

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

**(a)** was obliged,

**(b)** but for the operation of an agreement-based transitional instrument or an enterprise agreement would have been obliged, or

**(c)** if it had been an employer in the industry or of the occupations covered by this award would have been obliged

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

**A.2.2** In this clause minimum wage includes:

**(a)** a minimum wage for a junior employee, an employee to whom training arrangements apply and an employee with a disability;

**(b)** a piecework rate; and

**(c)** any applicable industry allowance.

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

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

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

**First full pay period on or after**

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

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

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

**A.3 Minimum wages - existing minimum wage higher**

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

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

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

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

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

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

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

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

**First full pay period on or after**

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

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

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

**A.4 Loadings and penalty rates**

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

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

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

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

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

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

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

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

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

<b>First full pay period on or after</b>	
1 July 2010	80%
1 July 2011	60%
1 July 2012	40%
1 July 2013	20%

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

## **A.6 Loadings and penalty rates - existing loading or penalty rate higher**

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

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

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

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

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

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

<b>First full pay period on or after</b>	
1 July 2010	80%
1 July 2011	60%
1 July 2012	40%
1 July 2013	20%

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

## **A.7 Loadings and penalty rates - no existing loading or penalty rate**

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

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

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

<b>First full pay period on or after</b>	
1 July 2010	20%
1 July 2011	40%
1 July 2012	60%
1 July 2013	80%

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

**A.8 Former Division 2B employers**

[A.8 inserted by PR503669 ppc 01Jan11]

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

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

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

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

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

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