

# Aged Care Award 2010 (MA000018)

## Table of Contents

<b>Part 1—Application and Operation.....</b>	<b>3</b>
1. Title .....	3
2. Commencement date .....	3
3. Definitions and interpretation.....	3
4. Coverage.....	3
5. Access to the award and the National Employment Standards .....	4
6. The National Employment Standards and this award .....	4
7. Award flexibility .....	4
<b>Part 2—Consultation and Dispute Resolution.....</b>	<b>5</b>
8. Consultation regarding major workplace change.....	5
9. Dispute resolution.....	6
<b>Part 3—Types of Employment and Termination of Employment.....</b>	<b>7</b>
10. Employment categories .....	7
11. Termination of employment.....	8
12. Redundancy .....	8
<b>Part 4—Minimum Wages and Related Matters .....</b>	<b>9</b>
13. Classifications .....	9
14. Minimum weekly wages .....	10
15. Allowances .....	10
16. District allowances .....	12
17. Payment of wages.....	13
18. Accident pay.....	13
19. Supported wage system.....	14
20. National training wage .....	14
21. Superannuation.....	14
<b>Part 5—Hours of Work and Related Matters.....</b>	<b>15</b>
22. Ordinary hours of work and rostering .....	15
23. Saturday and Sunday work.....	19
24. Breaks.....	19
25. Overtime penalty rates.....	20
26. Shiftwork.....	21

**Aged Care Award 2010 (MA000018)**

27.	Higher duties.....	22
<b>Part 6—Leave and Public Holidays .....</b>		<b>22</b>
28.	Annual leave .....	22
29.	Public holidays.....	22
30.	Personal/carer’s leave and compassionate leave .....	24
31.	Community service leave.....	24
32.	Ceremonial Leave .....	24
<b>Schedule A—Classification Definitions.....</b>		<b>25</b>
<b>Schedule B—Supported Wage System.....</b>		<b>30</b>

## Part 1—Application and Operation

### 1. Title

This award is the *Aged Care Award 2010*.

### 2. Commencement date

This award commences on 1 January 2010.

### 3. Definitions and interpretation

#### 3.1 In this award, unless the contrary intention appears:

**Act** means the *Workplace Relations Act 1996* (Cth)

**aged care industry** means the provision of accommodation and care services for aged persons in a hostel, nursing home, aged care independent living units, aged care serviced apartments, garden settlement, retirement village or any other residential accommodation facility including in the home

**Commission** means the Australian Industrial Relations Commission or its successor

**employee** has the meaning in the Act

**employer** has the meaning in the Act

**enterprise award** has the meaning in the Act

**enterprise NAPSA** means a NAPSA derived from a State award which immediately prior to 27 March 2006 applied only to a single business or a part of a single business

**NAPSA** means notional agreement preserving a State award and has the meaning in the Act

**NES** means National Employment Standards

**standard rate** means the minimum wage for an Aged care employee—level 6 in clause 14—Minimum weekly wages

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

### 4. Coverage

#### 4.1 This industry award covers employers throughout Australia in the aged care industry and their employees in the classifications listed in clause 14—Minimum weekly wages, to the exclusion of any other modern award.

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

**4.3** The award does not cover an employer bound by an enterprise award or enterprise NAPSA with respect to any employee who is covered by the enterprise award or enterprise NAPSA.

**4.4** 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 the Commission.
- 9.3** The parties may agree on the process to be utilised by the Commission including mediation, conciliation and consent arbitration.
- 9.4** Where the matter in dispute remains unresolved, the Commission may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute.
- 9.5** An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.

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

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

### **10. Employment categories**

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

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

At the time of engagement an employer will inform each employee whether they are employed on a full-time, part-time or casual basis. An employer may direct an employee to carry out such duties that are within the limits of the employee's skill, competence and training, consistent with the respective classification.

#### **10.2 Full-time employees**

A full-time employee is one who is engaged to work 38 hours per week or an average of 38 hours per week pursuant to clause 22.1 of this award.

#### **10.3 Part-time employees**

- (a) A part-time employee is an employee who is engaged to work less than full-time hours of an average of 38 hours per week and has reasonably predictable hours of work.
- (b) Before commencing employment, the employer and employee will agree in writing on a regular pattern of work including the number of hours to be worked each week, the days of the week the employee will work and the starting and finishing times each day.
- (c) The terms of the agreement may be varied by agreement and recorded in writing.
- (d) The terms of this award will apply on a pro rata basis to part-time employees on the basis that the ordinary weekly hours for full-time employees are 38.
- (e) Payment in respect of personal/carer's leave (where an employee has accumulated an entitlement) for a part-time employee will be on a pro rata basis made according to the number of hours the employee would have worked on the day or days on which the leave was taken so as not to reduce the employee's wage below that level which the employee would have received had the employee not been absent.

## **10.4 Casual employees**

- (a) A casual employee is an employee engaged as such on an hourly basis, other than as a part-time, full-time or fixed term employee, to work up to and including 38 ordinary hours per week.
- (b) A casual employee will be paid per hour worked at the rate of 1/38th of the weekly rate appropriate to the employee's classification. In addition, a loading of 25% of that rate will be paid instead of the paid leave entitlements accrued by full-time employees.

## **11. Termination of employment**

**11.1** Notice of termination is provided for in the NES.

### **11.2 Notice of termination by an employee**

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

### **11.3 Job search entitlement**

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

## **12. Redundancy**

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

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

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

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

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

#### **12.4 Job search entitlement**

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

#### **12.5 Transitional provisions**

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

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

### **13. Classifications**

All employees covered by this award must be classified according to the structure and definitions set out in Schedule A—Classification Definitions. Employers must advise their employees in writing of their classification upon commencement and of any subsequent changes to their classification.

**14. Minimum weekly wages**

Classification	Per week
	\$
Aged care employee—level 1	580.00
Aged care employee—level 2	605.00
Aged care employee—level 3	630.00
Aged care employee—level 4	637.60
Aged care employee—level 5	660.00
Aged care employee—level 6	697.00
Aged care employee—level 7	710.00

**15. Allowances**

**15.1 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 CPI figure
Meal allowance	Take away and fast foods sub-group
Clothing, equipment and tools allowance	Clothing and footwear group
Tools allowance	Tools component of the household appliances, utensils and tools sub-group
Vehicle/travel allowance	Private motoring sub-group

**15.2 Clothing and equipment**

- (a) Employees required by the employer to wear uniforms will be supplied with an adequate number of uniforms appropriate to the occupation free of cost to employees. Such items are to remain the property of the employer and be laundered and maintained by such employer free of cost to the employee.

- (b) Instead of the provision of such uniforms, the employer may, by agreement with the employee, pay such employee a uniform allowance at the rate of \$1.23 per shift or part thereof on duty or \$6.24 per week, whichever is the lesser amount. Where such employee's uniforms are not laundered by or at the expense of the employer, the employee will be paid a laundry allowance of \$0.32 per shift or part thereof on duty or \$1.49 per week, whichever is the lesser amount.
- (c) The uniform allowance, but not the laundry allowance, will be paid during all absences on leave, except absences on long service leave and absence on personal/carer's leave beyond 21 days. Where, prior to the taking of leave, an employee was paid a uniform allowance other than at the weekly rate, the rate to be paid during absence on leave will be the average of the allowance paid during the four weeks immediately preceding the taking of leave.
- (d) Where an employer requires an employee to wear rubber gloves, special clothing or where safety equipment is required for the work performed by an employee, the employer must reimburse the employee for the cost of purchasing such special clothing or safety equipment, except where such clothing or equipment is provided by the employer.

### 15.3 Leading hand allowance

- (a) A leading hand is an employee who is placed in charge of not less than two other employees of a substantially similar classification, but does not include any employee whose classification denotes supervisory responsibility.
- (b) A leading hand will be paid a weekly allowance of the amount specified by the item number in accordance with the following scale:

<b>Leading hand in charge of:</b>	<b>% of standard rate</b>
2-5 other employees	2.67
6-10 other employees	3.81
11-15 other employees	4.81
16-19 other employees	5.88

- (c) This allowance will be part of salary for all purposes of this award.
- (d) An employee who works less than 38 hours per week will be entitled to the allowances prescribed by this clause in the same proportion as the average hours worked each week bears to 38 ordinary hours.

### 15.4 Meal allowance

- (a) An employee will be supplied with an adequate meal where an employer has adequate cooking and dining facilities or be paid a meal allowance of \$10.00 in addition to any overtime payment as follows:
  - (i) when required to work after the usual finishing hour of work beyond one hour or, in the case of shiftworkers, when the overtime work on any shift exceeds one hour.
  - (ii) Provided that where such overtime work exceeds four hours a further meal allowance of \$9.00 will be paid.

- (b) Clause 15.4(a) will not apply when an employee could reasonably return home for a meal within the meal break.
- (c) On request meal allowance will be paid on the same day as overtime is worked.

#### **15.5 Nauseous work allowance**

An allowance of 0.05% of the standard rate per hour or part thereof will be paid to an employee in any classification if they are engaged in handling linen of a nauseous nature other than linen sealed in airtight containers and/or for work which is of an unusually dirty or offensive nature having regard to the duty normally performed by such employee in such classification. Any employee who is entitled to be paid an allowance will be paid a minimum sum of 0.27% of the standard rate for work performed in any week.

#### **15.6 Tool allowance**

A tool allowance of \$10.25 per week for the supply and maintenance of tools will be paid to chefs and cooks who are not provided with all necessary tools by the employer.

#### **15.7 Travelling, transport and fares**

- (a) An employee required and authorised to use their own motor vehicle in the course of their duties will be paid an allowance of not less than \$0.74 per kilometre.
- (b) When an employee is involved in travelling on duty, if the employer cannot provide the appropriate transport, all reasonably incurred expenses in respect to fares, meals and accommodation will be met by the employer on production of receipted account(s) or other evidence acceptable to the employer.
- (c) Provided further that the employee will not be entitled to reimbursement for expenses referred to in clause 15.7(b) which exceed the mode of transport, meals or the standard of accommodation agreed with the employer for these purposes.

### **16. District allowances**

#### **16.1 Northern Territory**

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

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

## **16.2 Western Australia and Queensland**

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

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

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

## **17. Payment of wages**

Wages are to be paid weekly or fortnightly.

### **17.1 Method of payment**

Subject to clause 17.3, by no later than payday, wages must be paid by cash or electronic funds transfer, the latter into the bank or financial institutional account nominated by the employee.

### **17.2 Termination**

When notice of termination of employment has been given by an employee or an employee's services have been terminated by an employer, payment of all wages and other moneys owing to an employee will be made to the employee by no later than the last day of the formal notice period.

### **17.3 Delay**

Notwithstanding the above, an employer will not be held liable for any unforeseen event outside the control of the employer which prevents the employer's ability to meet the requirements of this clause, for example bank error or delay.

## **18. Accident pay**

**18.1** Subject to clause 18.2, an employee is entitled to accident pay in accordance with the terms of:

- (a) a NAPSA that would have applied to the employee immediately prior to 1 January 2010 or an award made under the *Workplace Relations Act 1996* (Cth) that would have applied to the employee immediately prior to 27 March 2006, 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
- (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.

- 18.2** The employee's entitlement to accident pay under the NAPSA or award is limited to the amount of accident pay which exceeds the employee's entitlement to accident pay, if any, under any other instrument.
- 18.3** This clause does not operate to diminish an employee's entitlement to accident pay under any other instrument.
- 18.4** This clause ceases to operate on 31 December 2014.

## **19. Supported wage system**

See Schedule B

## **20. National training wage**

See Schedule C

## **21. Superannuation**

### **21.1 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.

### **21.2 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.

### **21.3 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 21.2.
- (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 21.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 21.3(a) or (b) was made.

#### **21.4 Superannuation fund**

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 21.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 21.2 and pay the amount authorised under clauses 21.3(a) or (b) to one of the following superannuation funds:

- (a) First State Super;
- (b) Health Industry Plan (HIP);
- (c) Health Employees Superannuation Trust of Australia (HESTA);
- (d) Health Super;
- (e) National Catholic Superannuation Fund;
- (f) Sisters of Mercy Staff Superannuation Scheme;
- (g) Sunsuper;
- (h) Tasplan;
- (i) Australian Superannuation Savings Employment Trust (Asset Super);
- (j) UC Super; or
- (k) 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**

### **22. Ordinary hours of work and rostering**

#### **22.1 Ordinary hours of work**

The ordinary hours of work will be 38 hours per week, or an average of 38 hours per week worked over 76 hours per fortnight or 114 hours per 21 days or 152 hours per four week period, and will be worked either:

- (a) in a period of 28 calendar days of not more than 20 work days in a roster cycle;
- (b) in a period of 28 calendar days of not more than 19 work days in a roster cycle, with the twentieth day taken as an accrued paid day off (ADO); or
- (c) eight hours on a day shift or 10 hours on a night shift.

## **22.2 Span of hours**

- (a) The ordinary hours of work for a day worker will be worked between 6.00 am and 6.00 pm Monday to Friday.
- (b) A shiftworker is an employee who is regularly rostered to work their ordinary hours outside the ordinary hours of work of a day worker, as defined in clause 22.1(a).

## **22.3 Rostered days off**

Employees, other than a casual employee, will be free from duty for not less than two full days in each week or four full days in each fortnight or eight full days in each 28 day cycle. Where practicable, days off will be consecutive.

## **22.4 Rest breaks between rostered work**

- (a) An employee will be allowed a break of not less than 10 hours between the termination of one shift or period of duty and the commencement of another.
- (b) By mutual agreement, the 10 hour rest break may be reduced to eight hours.

## **22.5 Accumulation and taking of accrued days off (ADOs)**

- (a) This clause will only apply to full-time employees.
- (b) Where an employee is entitled to an ADO in accordance with the arrangement of ordinary hours of work as set out in clause 22.1, ADOs will be taken within 12 months of the date on which the first full ADO accrued.
- (c) Where an employee's employment terminates for any reason, accumulated ADOs will be paid to the employee at ordinary rates.
- (d) The taking of an employee's ADO will be determined, by mutual agreement between the employee and the employer, having regard to the needs of the place of employment or sections thereof. Such ADO will, where practicable, be consecutive with the rostered days off prescribed in clause 22.3 above. ADOs will not be rostered on public holidays.

## **22.6 Rosters**

- (a) The ordinary hours of work for each employee will be displayed on a roster in a place conveniently accessible to employees. Such roster will be displayed at least two weeks prior to the commencing date of the first working period in any roster subject to clause 22.6(c) below.
- (b) In the case of homecare employees, alternative means of communicating change of rosters such as telephone communication, direct contact, mail or facsimile will be accepted.
- (c) It is not obligatory for the employer to display any roster of the ordinary hours of work of casual or relieving staff.
- (d) Seven days notice will be given of a change in a roster. However, a roster may be altered at any time to enable the service of the organisation to be carried on

where another employee is absent from duty on account of illness or in an emergency.

- (e) This clause will not apply where the only change to the roster of a part-time employee is the mutually agreed addition of extra hours to be worked such that the part-time employee still has two rostered days off in that week or four rostered days off in that fortnight, as the case may be.
- (f) Where practicable, ADOs will be displayed on the roster.
- (g) This clause will not apply to hostel supervisors.

## 22.7 Minimum engagements

- (a) Full-time employees will receive a minimum payment of four hours for each engagement in respect of ordinary hours of work.
- (b) Permanent part-time and casual employees, other than homecare employees, will receive a minimum payment of two hours for each engagement.
- (c) Permanent part-time homecare employees and casual homecare employees will receive a minimum of one hour for each engagement.
- (d) Subject to clause 22.8, except for meal breaks, the hours of work on any day will be continuous.

## 22.8 Broken shifts

With respect to broken shifts:

- (a) **Broken shift** for the purposes of this clause means a shift worked by a casual or permanent part-time employee that includes breaks (other than a meal break) totalling not more than four hours and where the span of hours is not more than 12 hours.
- (b) A broken shift may be worked for up to four weeks where there is mutual agreement between the employer and employee to work the broken shift.
- (c) Payment for a broken shift will be at ordinary pay with penalty rates and shift allowances in accordance with clause 25—Overtime penalty rates, with shift allowances being determined by the commencing time of the broken shift.
- (d) All work performed beyond the maximum span of 12 hours for a broken shift will be paid at double time.
- (e) An employee must receive a minimum break of 10 hours between broken shifts rostered on successive days.

## 22.9 Sleepovers

Employees may, in addition to normal rostered shifts, be required to sleepover. A **sleepover** means sleeping in at night in order to be on call for emergencies.

The following conditions will apply to each night of sleepover:

- (a) The span for a sleepover will be not less than eight hours and not more than 10 hours on any one night.

**Aged Care Award 2010 (MA000018)**

- (b)** Employees will be provided with free board and lodging for each night on which they are required to sleepover.
- (c)** Employees will be provided with a separate room with a bed and use of staff facilities or client facilities where applicable.
- (d)** In addition to the provision of free board and lodging for sleepovers, the employee will be entitled to a sleepover allowance of \$36.00 for each night on which they sleep over.
- (e)** No work other than that of an emergency nature will be required to be performed during any sleepover. For the purposes of this clause an emergency is any unplanned occurrence or event requiring prompt action.
- (f)** An employee directed to perform work other than that of an emergency nature during any sleepover will be paid the appropriate hourly rate from the start of the sleepover to the end of the non-emergency work, or from the start of the non-emergency work to the end of the sleepover, whichever is the lesser, in addition to the sleepover allowance in clause 22.9(d).
- (g)** All time worked during any sleepover will count as time worked and be paid for in accordance with the following provisions:
  - (i)** All time worked by full-time employees during any sleepover will be paid for at overtime rates.
  - (ii)** All time worked by permanent part-time employees during any sleepover will be paid for at ordinary pay plus applicable shift and weekend penalties; provided that, if the total number of hours worked on that day exceeds the number of hours worked by full-time employees, or 11 hours where there are no such full-time employees, then the excess hours worked on that day will be paid for at overtime rates; and provided further that if the total number of hours worked in the week exceeds 38 hours, or exceeds 76 hours in the fortnight, then the excess hours worked in that week or fortnight will be paid for at overtime rates.
  - (iii)** All time worked by casual employees during any sleepover will be paid for at ordinary pay plus applicable shift and weekend penalties; provided that if the total number of hours worked in the week exceeds 38 hours, or exceeds 76 hours in the fortnight, then the excess hours worked in that week or fortnight will be paid for at overtime rates.
  - (iv)** And provided further that where the employee does not have eight consecutive hours off duty between ordinary rostered duty on successive days, then the provisions of clause 22.9(j) will apply.
- (h)** A sleepover may be rostered to commence immediately at the conclusion of the employee's shift and continuous with that shift; and/or immediately prior to the employee's shift and continuous with that shift, and not otherwise.
- (i)** No employee will be required to sleepover during any part of their rostered days off or ADOs.
- (j)** An employee (whether a full-time employee, permanent part-time employee or casual employee) who performs so much work during sleepover periods

between the termination of their ordinary work on any day or shift and the commencement of their ordinary work on the next day or shift that they have not had at least eight consecutive hours off duty between these times will, subject to this clause, be released after completion of such work until they have had eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence. If, on the instruction of the employer, such an employee resumes or continues to work without having eight consecutive hours off duty, the employee will be paid at double the appropriate rate until they are released from duty for eight consecutive hours and will be entitled to be absent until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

- (k) Casual employees may only be used for sleepovers when full-time employees or permanent part-time employees are not available for that duty. In no case will casual employees be used exclusively, or almost exclusively, for sleepovers.

Nothing in this clause will preclude the employer from rostering an employee to work shift work instead of undertaking sleepovers.

## **23. Saturday and Sunday work**

**23.1** Employees whose ordinary working hours include work on a Saturday and/or Sunday, will be paid for ordinary hours worked between midnight on Friday and midnight on Saturday at the rate of time and a half, and for ordinary hours worked between midnight on Saturday and midnight on Sunday at the rate of time and three quarters. These extra rates will be in substitution for and not cumulative upon the shift premiums prescribed in clause 26—Shiftwork.

**23.2** Casual employees who work less than 38 hours per week will not be entitled to payment in addition to any casual loading in respect of their employment between midnight on Friday and midnight on Sunday.

## **24. Breaks**

### **24.1 Meal breaks**

- (a) Each employee who works in excess of five hours will be entitled to an unpaid meal break of not less than 30 minutes and not more than 60 minutes duration, to be taken at a mutually agreed time after commencing work.
- (b) Where an employee is required to remain available or on duty during a meal break, the employee will be paid overtime for all time worked until the meal break is taken.

### **24.2 Tea breaks**

- (a) Two separate 10 minute intervals (in addition to meal breaks) will be allowed to each employee on duty during each ordinary shift of 7.6 hours or more.
- (b) Where less than 7.6 ordinary hours are worked, employees will be allowed one 10 minute interval in each four hour period.

- (c) Subject to mutual agreement, such intervals may alternatively be taken as one 20 minute interval.
- (d) Tea breaks will count as time worked.

## **25. Overtime penalty rates**

### **25.1 Overtime rates**

#### **(a) Full-time employees**

A full-time employee will be paid the following payments for all work done in addition to their rostered ordinary hours on any day:

- (i) for all authorised overtime on Monday to Friday, payment will be made at the rate of time and a half for the first two hours and double time thereafter;
- (ii) for all authorised overtime on a Saturday or Sunday, payment will be made at the rate of double time; and
- (iii) for all authorised overtime on a public holiday, payment will be made at the rate of double time and a half.

Overtime rates under this clause will be in substitution for, and not cumulative upon, the shift premiums prescribed in clause 26.1.

#### **(b) Part-time employees**

- (i) All time worked by part-time employees in excess of 38 hours per week or 76 per fortnight will be paid for at the rate of time and a half for the first two hours and double time thereafter, except that on Saturdays and Sundays such overtime will be paid for at the rate of double time and on public holidays at the rate of double time and a half.
- (ii) All time worked by part-time employees which exceeds 10 hours per day, will be paid at the rate of time and a half for the first two hours and double time thereafter, except on Sundays when overtime will be paid for at the rate of double time, and on public holidays at the rate of double time and a half.
- (iii) Where agreement has been reached in accordance with clause 10.3(c), time worked up to hours prescribed in clause 25.1(b)(ii) will not be regarded as overtime but an extension of the contract hours for that day and will be paid for the ordinary rate of pay.

#### **(c) Time off instead of payment for overtime**

By mutual agreement, an employee may be compensated by way of time off instead of payment of overtime (time for time) on the following basis:

- (i) Time off instead of payment for overtime must be taken at ordinary rates within three months of it being accrued.

(ii) Where it is not possible for an employee to take the time off, instead of payment for overtime, within the three month period, it is to be paid out at the appropriate overtime rate based on the rates of pay applying at the time payment is made.

(iii) An employee cannot be compelled to take time off instead of overtime.

**(d) Rest period after overtime**

(i) An employee, other than a casual, who works so much overtime between the termination of their ordinary work on any day or shift and the commencement of their ordinary work on the next day or shift, that they have not had at least 10 consecutive hours off duty between those times, will be released after completion of such overtime until they have had 10 consecutive hours off duty without loss of pay for rostered ordinary hours occurring during such absence.

(ii) If on the instructions of the employer, such an employee resumes or continues work without having had 10 consecutive hours off duty, they will be paid at the rate of double time until they are released from duty for such rest period and they will then be entitled to be absent until they have had 10 consecutive hours off duty without loss of pay for rostered ordinary hours occurring during such absence.

**(e) Recall to work overtime**

An employee recalled to work overtime after leaving the employer's premises will be paid for a minimum of four hours work at the appropriate rate for each time so recalled. If the work required is completed in less than four hours, the employee will be released from duty.

**(f) Rest break during overtime**

(i) An employee recalled to work overtime after leaving the employer's premises and who is required to work for more than four hours will be allowed 20 minutes for the partaking of a meal and a further 20 minutes after each subsequent four hours overtime; all such time will be counted as time worked.

(ii) The meals referred to in clause 25.1(f)(i) will be allowed to the employee free of charge. Where the facility is unable to provide such meals, a meal allowance, as prescribed in clause 15.1 will be paid to the employee concerned.

## **26. Shiftwork**

### **26.1 Shift allowances and penalty rates**

Employees working afternoon or night shift will be paid the following percentages in addition to the ordinary rate for such shift. Provided that employees who work less than 38 hours per week will only be entitled to the additional rates where their shifts commence prior to 6.00 am or finish subsequent to 6.00 pm.

(a) Afternoon shift commencing at 10.00 am and before 1.00 pm—10%

- (b) Afternoon shift commencing at 1.00 pm and before 4.00 pm—12.5%
- (c) Night shift commencing at 4.00 pm and before 4.00 am—15%
- (d) Night shift commencing at 4.00 am and before 6.00 am—10%

## **27. Higher duties**

**27.1** An employee engaged in any duties carrying a higher wage rate than the classification in which they are ordinarily employed in any one day or shift will be paid at the higher wage rate for:

- (a) the time so worked for two hours or less; or
- (b) a full day or shift where the time so worked exceeds two hours.

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

### **28. Annual leave**

Annual leave is provided for in the NES. This clause contains additional provisions.

#### **28.1 Quantum of annual leave**

- (a) In addition to the entitlements in the NES a shiftworker or an employee who works for more than four ordinary hours on 10 or more weekends is entitled to an additional week's annual leave on the same terms and conditions.
- (b) For the purpose of the NES, a shiftworker is defined as an employee who is regularly rostered to work their ordinary hours outside the ordinary hours of work of a day worker as defined in clause 22.2(a).

#### **28.2 Annual leave loading**

- (a) In addition to their ordinary pay, an employee, other than a shiftworker, will be paid an annual leave loading of 17.5 % of their ordinary rate of pay.
- (b) Shiftworkers, in addition to their ordinary pay, will be paid the higher of:
  - (i) annual leave loading of 17.5% of their ordinary rate of pay; or
  - (ii) the weekend and shift penalties the employee would have received had they not been on leave during the relevant period.

### **29. Public holidays**

Public holidays are provided for in the NES. This clause contains additional provisions.

## **29.1 Payment for working on a public holiday**

### **(a) Full-time day workers**

A full-time employee who works their ordinary hours Monday to Friday and starts between 6.00 am and 10.00 am will, in addition to their ordinary pay for work performed on a public holiday, elect to receive one of the following:

- (i) payment of an additional sum equal to 150% for hours worked; or
- (ii) have the same number of hours worked added to their annual leave.
  - The election in clauses 29.1(a)(i) and (ii) will be made on the commencement of employment and then on the anniversary date each year. The employee may not alter such election during the year except with the agreement of the employer.
  - A full-time employee who works their ordinary hours Monday to Friday and starts between 6.00 am and 10.00 am who does not work on a public holiday will be paid their ordinary pay for that day.
  - Payments under this clause are instead of any additional rate for shift or weekend work which would otherwise be payable had the shift not been a public holiday.

### **(b) Part-time employees**

- (i) A part-time employee will only be entitled to payment for those public holidays that fall on days they are normally rostered to work.
- (ii) A part-time employee will, in addition to their ordinary pay for work performed on a public holiday, elect to receive one of the following:
  - payment of an additional sum equal to 150% for hours worked; or
  - have the same number of hours worked added to their annual leave.
- (iii) The election in clause 29.1(b)(ii) will be made on the commencement of employment and then on the anniversary date each year. The employee may not alter such election during the year except with the agreement of the employer.
- (iv) A part-time employee who is rostered off on a public holiday they would ordinarily work will be paid their ordinary pay for that day.
- (v) Payments under this clause are instead of any additional rate for shift or weekend work which would otherwise be payable had the shift not been a public holiday.

### **(c) Casual employees**

- (i) A casual employee will be paid only for those public holidays they work at the total rate of 250% for hours worked.
- (ii) Payments under clause 29.1(c)(i) are instead of and replace any casual loading otherwise payable under this award.

- (iii) Payments under this clause are instead of any addition rate for shift or weekend work which would otherwise be payable had the shift not been a public holiday.

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

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

**31. Community service leave**

Community service leave is provided for in the NES.

**32. Ceremonial Leave**

An employee who is legitimately required by Aboriginal tradition to be absent from work for Aboriginal ceremonial purposes will be entitled to up to 10 working days unpaid leave in any one year, with the approval of the employer.

## **Schedule A—Classification Definitions**

### **A.1 Aged care employee—level 1**

#### **Entry level:**

An employee who has less than three months work experience in the industry and performs basic duties.

An employee at this level:

- works within established routines, methods and procedures;
- has minimal responsibility, accountability or discretion;
- works under direct or routine supervision, either individually or in a team; and
- requires no previous experience or training.

Indicative tasks performed at this level are:

#### **General and administrative services**

General clerk

Laundry hand

Cleaner

Assistant gardener

#### **Food services**

Food services assistant

### **A.2 Aged care employee—level 2**

An employee at this level:

- is capable of prioritising work within established routines, methods and procedures;
- is responsible for work performed with a limited level of accountability or discretion;
- works under limited supervision, either individually or in a team;
- possesses sound communication skills; and
- requires specific on-the-job training and/or relevant skills training or experience.

## Aged Care Award 2010 (MA000018)

Indicative tasks performed at this level are:

<b>General and administrative services</b>	<b>Food services</b>	<b>Personal care</b>
General clerk/Typist (between 3 months and less than 1 years service)	Food services assistant	Personal care worker grade 1
Laundry hand		
Cleaner		
Gardener (non-trade)		
Maintenance/Handyperson (unqualified)		
Driver (less than 3 ton)		

### A.3 Aged care employee—level 3

An employee at this level:

- is capable of prioritising work within established routines, methods and procedures (non admin/clerical);
- is responsible for work performed with a medium level of accountability or discretion (non admin/clerical);
- works under limited supervision, either individually or in a team (non admin/clerical);
- possesses sound communication and/or arithmetic skills (non admin/clerical);
- requires specific on-the-job training and/or relevant skills training or experience (non admin/clerical); and
- In the case of an admin/clerical employee, undertakes a range of basic clerical functions within established routines, methods and procedures.

Indicative tasks performed at this level are:

<b>General and administrative services</b>	<b>Food services</b>	<b>Personal care</b>
General clerk/Typist (second and subsequent years of service)	Cook	Personal care worker grade 2
Receptionist		Recreational/Lifestyle activities officer (unqualified)
Pay clerk		
Driver (less than 3 ton) who is required to hold a St John Ambulance first aid certificate		

#### **A.4 Aged care employee—level 4**

An employee at this level:

- is capable of prioritising work within established policies, guidelines and procedures;
- is responsible for work performed with a medium level of accountability or discretion;
- works under limited supervision, either individually or in a team;
- possesses good communication, interpersonal and/or arithmetic skills; and
- requires specific on-the-job training, may require formal qualifications and/or relevant skills training or experience.
- In the case of a Personal care worker, is required to hold a relevant Certificate III qualification.

Indicative tasks performed at this level are:

##### **General and administrative services**

Senior clerk

Senior receptionist

Maintenance/Handyperson (qualified)

Driver (3 ton and over)

Gardener (trade)

##### **Food services**

Senior cook (trade)

##### **Personal care**

Personal care worker  
grade 3

#### **A.5 Aged care employee—level 5**

An employee at this level:

- is capable of functioning semi-autonomously, and prioritising their own work within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability;
- works either individually or in a team;
- may assist with supervision of others;

### Aged Care Award 2010 (MA000018)

- requires a comprehensive knowledge of medical terminology and/or a working knowledge of health insurance schemes (admin/clerical);
- may require basic computer knowledge or be required to use a computer on a regular basis;
- possesses administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and
- requires substantial on-the-job training, may require formal qualifications at trade or certificate level and/or relevant skills training or experience.

Indicative tasks performed at this level are:

<b>General and administrative services</b>	<b>Food services</b>	<b>Personal care</b>
Secretary interpreter (unqualified)	Chef	Personal care worker grade 4

#### **A.6 Aged care employee—level 6**

An employee at this level:

- is capable of functioning with a high level of autonomy, and prioritising their work within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability and responsibility;
- works either individually or in a team;
- may require comprehensive computer knowledge or be required to use a computer on a regular basis;
- possesses administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and
- may require formal qualifications at post-trade or Advanced Certificate or Associate Diploma level and/or relevant skills training or experience.

Indicative tasks performed at this level are:

<b>General and administrative services</b>	<b>Food services</b>
Maintenance tradesperson (advanced)	Senior chef
Gardener (advanced)	

## A.7 Aged care employee—level 7

An employee at this level:

- is capable of functioning autonomously, and prioritising their work and the work of others within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability and responsibility;
- may supervise the work of others, including work allocation, rostering and guidance;
- works either individually or in a team;
- may require comprehensive computer knowledge or be required to use a computer on a regular basis;
- possesses developed administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and
- may require formal qualifications at trade or Advanced Certificate or Associate Diploma level and/or relevant skills training or experience.

Indicative tasks performed at this level are:

### **General and administrative services**

Clerical supervisor

Interpreter (qualified )

Gardener superintendent

General services supervisor

### **Food services**

Chef /Food services  
supervisor

### **Personal care**

Personal care worker  
grade 5

## Schedule B—Supported Wage System

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

**B.2** In this schedule:

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

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

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

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

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

**SWS wage assessment agreement** means the document in the form required by the Department of Education, Employment and Workplace Relations that records the employee's productive capacity and agreed wage rate

### **B.3 Eligibility criteria**

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

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

## **B.4 Supported wage rates**

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

<b>Assessed capacity (clause B.5)</b>	<b>Relevant minimum wage</b>
<b>%</b>	<b>%</b>
10	10
20	20
30	30
40	40
50	50
60	60
70	70
80	80
90	90

**B.4.2** Provided that the minimum amount payable must be not less than \$69 per week.

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

## **B.5 Assessment of capacity**

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

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

## **B.6 Lodgement of SWS wage assessment agreement**

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

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

## **B.7 Review of assessment**

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

## **B.8 Other terms and conditions of employment**

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

## **B.9 Workplace adjustment**

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

## **B.10 Trial period**

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

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

**B.10.3** The minimum amount payable to the employee during the trial period must be no less than \$69 per week.

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

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