

Nursery Award 2010

The above award was first made on 3 April 2009 [\[PR986374\]](#)

This consolidated version of the award includes variations made on 11 September 2009 [\[PR988418\]](#); 21 September 2009 [\[PR989303\]](#); 9 November 2009 [\[PR990479\]](#)

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

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Part 1—Application and Operation

1. Title

This award is the *Nursery Award 2010*.

2. Commencement and transitional

[Varied by [PR988418](#)]

2.1 This award commences on 1 January 2010.

[2.2–2.6 inserted by [PR988418](#)]

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

3.1 In this award, unless the contrary intention appears:

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

associated nursery products means all items required for the propagation, growing, maintenance and sales of plants and plant material. This includes products used in the garden environment for the planting, growing, maintenance and care of plants

casual employee means an employee who is engaged as a casual under the terms of clause 10—Types of employment of this award

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

plant material means organisms defined under the *Kingdom Plantae*

plant nursery means a business involved in the nursery industry

silviculture and afforestation means the planting, pruning, fertilising and any other activities in or in connection with the establishment or cultivation of trees in forests

standard rate means the minimum hourly wage for the Grade 2 classification in clause 15.1. This rate is to be used for the purposes of calculating the various allowances that are linked to the standard rate.

vineyard means a place where wine grapes are grown for processing into wine

wine industry means:

- the preparation of land for planting of wine grape vines; care, growing, treating, picking, harvesting, forwarding of wine grapes; and pruning of wine grape vines and other activities associated with a wine grape vineyard;
- processing wine grapes; producing wine juice or grape spirit; bottling, packaging, storage or despatch of wine, brandy or other potable spirit, liqueurs, vinegar or grape juice and other activities associated with a winery or wine distillery including

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but not limited to cellar door sales, coopers, machinists, labourers making or repairing barrels, vats, casks, and like articles and laboratories; and

- the packaging, storage and despatching of wine or grape spirit from a warehouse facility or other place of storage associated with a winery or wine distillery

3.2 Where this award refers to a condition of employment provided for in the NES, the reference is to the condition as defined in the NES.

4. Coverage

[Sched A renumbered as Sched B by [PR988418](#)]

4.1 This industry award covers employers throughout Australia in the nursery industry and their employees in the classifications listed in Schedule B—Classification Structure and Definitions to the exclusion of any other award.

4.2 **Nursery industry** means:

- (a) the propagation, planting, growing, cultivation, maintenance, sale, distribution or treating of plant material and associated nursery products in plant nurseries, flower, turf and tree farms or other similar enterprises;
- (b) the production and modification of growing media and clearing, treating or preparing of land for the propagation, planting, growing, cultivation, maintenance, sales and distribution or treating of plant material and associated products;
- (c) the processing, grading, packing or storing of plant material and associated products as part of a nursery; and
- (d) the despatching and distribution of plant material and associated products in connection with work under clauses 4.2(a) to 4.2(c).

4.3 **Nursery industry** does not mean:

- (a) the general retail industry as defined in the *General Retail Industry Award 2010*;
- (b) the wine industry;
- (c) silviculture and afforestation; or
- (d) sugar farming, sugar cane growing, sugar milling, sugar refining, sugar distilleries or sugar terminals.

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

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

4.6 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;

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- (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. Types of employment

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

10.2 Full-time employment

- (a) A full-time employee is an employee who is engaged to work 38 ordinary hours per week.
- (b) A full-time employee will be provided with a written statement setting out their classification, applicable pay scale and terms of engagement.

10.3 Part-time employment

- (a) A part-time employee is an employee who is engaged to perform a number of ordinary hours less than the full-time hours of 38 per week; and receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.
- (b) At the time of engagement the employer and the part-time employee will agree in writing on a regular pattern of work, specifying at least the hours to be worked each day and which days of the week the employee will work.
- (c) Changes in hours may only be made by agreement between the employer and employee. Any agreed variation to the regular pattern of work will be recorded in writing.
- (d) A part-time employee will be entitled to payment for annual leave, long service leave, public holidays, personal/carer's leave and bereavement leave pursuant to this award on a pro rata basis to that of the equivalent full-time employee.
- (e) An employer is required to roster a part-time employee for a minimum of three consecutive hours on any shift.
- (f) The spread of ordinary working hours will be the same as those prescribed for full-time employees.
- (g) A part-time employee employed under the provisions of this clause must be paid for ordinary hours worked at the rate of 1/38th of the weekly rate prescribed for the class of work performed.
- (h) An employee who does not meet the definition of a part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 10.4.
- (i) **Rosters**
 - (i) A part-time employee's roster, but not the agreed number of hours, may be altered by the giving of notice in writing of seven days or in the case of an emergency, 48 hours, by the employer to the employee.

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- (ii) The rostered hours of part-time employees may be altered at any time by mutual agreement between the employer and the employee.
- (iii) Rosters will not be changed except as provided in clause 10.3(i)(i) from week to week, or fortnight to fortnight, nor will they be changed to avoid any award entitlements.

10.4 Casual employment

- (a) A casual employee is an employee engaged as such and paid by the hour. An employer, when engaging a casual, must inform the employee that they are employed as a casual, stating by whom the employee is employed, their classification level and their rate of pay.
- (b) A casual employee must be paid per hour at the rate of 1/38th of the weekly rate prescribed for the class of work performed, plus 25%.
- (c) The casual loading is paid instead of annual leave, personal/carer's leave, notice of termination, redundancy benefits and the other entitlements of full-time or part-time employment.
- (d) Casual employees must be paid at the termination of each engagement, but may agree to be paid weekly or fortnightly.
- (e) On each occasion a casual employee is required to attend for work, casual employees are entitled to a minimum payment of three hours work at the appropriate rate.

11. Abandonment of employment

- 11.1 The absence of an employee from work for a continuous period exceeding three working days without the consent of the employer and without notification to the employer is evidence that the employee has abandoned their employment.
- 11.2 If within a period of 14 days from their last attendance at work or the date of their last absence in respect of which notification has been given or consent has been granted an employee has not established to the satisfaction of their employer that they were absent for reasonable cause, the employee is deemed to have abandoned their employment.
- 11.3 Termination of employment by abandonment in accordance with this clause operates as from the date of the last attendance at work or the last day's absence in respect of which consent was granted, or the date of the last absence in respect of which notification was given to the employer, whichever is the latter.

12. Termination of employment

- 12.1 Notice of termination is provided for in the NES.
- 12.2 **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.

12.3 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.

13. Redundancy

13.1 Redundancy pay is provided for in the NES.

13.2 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.

13.3 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.

13.4 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 12.3.

13.5 Transitional provisions

- (a) Subject to clause 13.5(b), an employee whose employment is terminated by an employer is entitled to redundancy pay in accordance with the terms of a NAPSA:

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- (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 13.5 ceases to operate on 31 December 2014.

Part 4—Minimum Wages and Related Matters

14. Classifications

[Sched A renumbered as Sched B by [PR988418](#)]

Employees will be classified in accordance with the classification descriptions contained in Schedule B—Classification Structure and Definitions of this award.

15. Minimum wages

15.1 The minimum wages for an adult employee, other than one specified in clause 15.3, are set out in the following table:

Classification	Minimum weekly wage \$	Minimum hourly wage \$
Grade 1A	543.90	14.31
Grade 1B	560.50	14.75
Grade 2	571.10	15.03
Grade 3	600.00	15.79
Grade 4	637.60	16.78
Grade 5	707.10	18.61
Grade 6	772.30	20.32

15.2 For the purposes of clause 15.1, minimum weekly wage means any entitlement which an employee would receive for performing 38 hours of work.

15.3 The following adult employees are not entitled to the minimum wages set out in the table in clause 15.1.

[Sched C renumbered as Sched D by [PR988418](#)]

- (a) an employee receiving a supported wage (refer to Schedule D); or
- (b) an employee covered by clauses 17—Junior wages or 18—National training wage.

15.4 Higher duties

[Varied by [PR990479](#)]

An employee engaged for more than two hours during one day on duties carrying a higher minimum wage than their ordinary classification must be paid the higher minimum wage for such day or shift. If an employee is so engaged for two hours or less during one day, they must be paid the higher minimum wage for the time so worked

16. Apprentices

[16 inserted by [PR990479](#)]

16.1 Any apprentice, other than as provided in clause 16.2, must be paid the following percentage of the Grade 4 rate of pay:

Year of apprenticeship	%
1st year	50
2nd year	63
3rd year	75
4th year	90

16.2 A trainee apprentice in New South Wales must be paid the following percentage of the Grade 4 rate of pay:

Year of apprenticeship	%
1st year	58
2nd year	67
3rd year	76
4th year	91”

16.3 Clause 16.2 will cease to operate on 31 December 2014.

17. Junior wages

[16 renumbered as 17 by [PR990479](#)]

Junior employees must be paid the following percentage of the appropriate wage rate in clause 15—Minimum wages.

Age	% of appropriate wage rate
Under 16 years of age	50
16 years of age	60
17 years of age	70
18 years of age	80
19 years of age	90
20 years of age	100

18. National training wage

[17 renumbered as 18 by [PR990479](#)]

[Sched B renumbered as Sched C by [PR988418](#)]

See Schedule C

19. Supported wage system

[18 renumbered as 19 by [PR990479](#)]

[Sched C renumbered as Sched D by [PR988418](#)]

See Schedule D

20. Allowances

[19 renumbered as 20 by [PR990479](#)]

20.1 All purpose allowances

The following allowances apply for all purposes of this award:

(a) First aid allowance

An employee who has been trained to render first aid and who is the current holder of appropriate first aid qualifications such as a certificate from the St John Ambulance or similar body must be paid a weekly allowance of 70% of the standard rate if appointed by their employer to perform first aid duty.

(b) Meal allowance

An employee required to work overtime for more than two hours after the employee's ordinary ceasing time without having been notified before leaving work on the previous day that the employee will be required to work overtime, will be provided free of cost with a suitable meal, and if the work extends into

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a second meal break, another meal. In the event of the meal not being supplied the employee is entitled to an amount of \$10.35 for each meal.

(c) Tool and equipment allowance

Where the employer requires an employee to supply their own tools and equipment, the employer must reimburse the employee for the cost of supplying such tools and equipment. This clause does not apply where the tools and equipment are paid for by the employer.

(d) Travelling allowance

Where an employee is required to travel from one place to another, the time occupied in travelling will be counted as time worked, and paid for as such. Where an employee is compelled by their duties to spend the night away from home or the property at which the employee is employed (whichever is the employee's normal place of sleeping during employment) the employer will reimburse the employee for the demonstrable cost of suitable accommodation. This clause will not apply where the employer provides the employee with suitable accommodation free of charge.

20.2 Adjustment of expense related allowances

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.

The applicable index figure is the index figure published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index (Cat No. 6401.0), as follows:

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

21. District allowances

[20 renumbered as 21 by [PR990479](#)]

21.1 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.

21.2 Western Australia

An employee in Western Australia is entitled to payment of a district allowance in accordance with the terms of a NAPSAs 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.

21.3 This clause ceases to operate on 31 December 2014.

22. Payment of wages

[21 renumbered as 22 by [PR990479](#)]

22.1 Period of payment

Wages must be paid weekly, fortnightly or monthly.

22.2 Method of payment

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

22.3 Payment of wages on termination of employment

On termination of employment, wages due to an employee must be paid on the day of termination or forwarded to the employee on the next working day.

23. Superannuation

[Varied by [PR989303](#); 22 renumbered as 23 by [PR990479](#)]

23.1 Superannuation legislation

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

23.2 Employer contributions

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

23.3 Voluntary employee contributions

- (a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 23.2.
- (b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.
- (c) The employer must pay the amount authorised under clauses 23.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 23.3(a) or (b) was made.

23.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 23.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 23.2 and pay the amount authorised under clauses 23.3(a) or (b) to one of the following superannuation funds:

- (a) Australian Primary Industry Superannuation Fund;

[22.4(b) inserted by [PR989303](#); 22 renumbered as 23 by [PR990479](#)]

- (b) AustSafe Super

[22.4(b)–22.4(e) renumbered as 22.4(c)–22.4(f) by [PR989303](#); 22 renumbered as 23 by [PR990479](#)]

- (c) HortSuper;
- (d) Tasplan;
- (e) Sunsuper; or
- (f) 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

24. Ordinary hours of work and rostering

[23 renumbered as 24 by [PR990479](#)]

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

24.2 Ordinary hours of work

- (a) The ordinary hours of work for full-time employees are an average of 38 per week but not exceeding 152 hours in 28 days.
- (b) The ordinary hours of work may be worked between the hours of 6.00 am and 6.00 pm on any five out of seven days. Provided that the ordinary hours of work may be worked between 6.00 am and 9.00 pm on one day per week between Monday and Friday.
- (c) Subject to this clause, the ordinary hours of work will not exceed eight hours on any day, provided that by arrangement between an employer and an employee ordinary working hours greater than eight but not exceeding 10 on any day may be worked subject to:
 - (i) the employer and employee concerned being guided by relevant occupational health and safety provisions;
 - (ii) suitable roster arrangements being made; and
 - (iii) proper supervision being provided.
- (d) The rate of pay for ordinary hours worked on a Saturday will be at the rate of 125% of the appropriate minimum wage calculated hourly.
- (e) The rate of pay for ordinary hours worked on a Sunday will be at the rate of 200% of the standard rate.
- (f) All time worked outside the ordinary hours of work will be overtime.

25. Breaks

[24 renumbered as 25 by [PR990479](#)]

25.1 An unpaid meal break of not less than 30 minutes and not more than one hour will be allowed each day, to be taken not later than five hours after commencing ordinary hours of work. Provided that where there is mutual agreement between employer and individual employee, such meal break may be taken as agreed.

25.2 All work performed on the instruction of the employer during a meal break will be paid for at the rate of 200% of the appropriate minimum wage. Such payment will continue until the employee is released for a meal break of not less than 30 minutes.

25.3 Employees will be allowed a paid rest break of 10 minutes each morning. Where agreement is reached between the employer and employee for additional rest breaks,

such rest breaks will be unpaid and in addition to the employee's ordinary hours of work.

26. Overtime and penalty rates

[25 renumbered as 26 by [PR990479](#)]

26.1 Payment for working overtime

The rate of pay for overtime will be 150% of the appropriate minimum wage for the first three hours and 200% thereafter, except on Sunday when the rate will be 200% for all time worked.

26.2 Payment for working on public holidays

- (a) All work performed on public holidays will be paid for at the rate of 250%.
- (b) All employees required to work on a public holiday will be paid for a minimum of four hours.

26.3 Call-back

An employee recalled to work overtime after leaving the employer's business premises will be paid for a minimum of three hours work at the appropriate rate for each time so recalled. This subclause does not apply in cases where it is customary for an employee to return to the employer's premises to perform a specific job outside the employee's ordinary working hours, or where the overtime is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary working time.

Part 6—Leave and Public Holidays

27. Annual leave

[26 renumbered as 27 by [PR990479](#)]

27.1 Annual leave is provided for in the NES. Annual leave does not apply to a casual employee.

27.2 Conversion to hourly entitlement

An employer may reach agreement with an employee to convert the annual leave entitlement in the NES to an hourly entitlement for administrative ease (e.g. 152 hours for a full-time employee entitled to four weeks annual leave).

27.3 Payment for period of annual leave

An employee under this award, before going on annual leave, must be paid the wages they would have received in respect of the ordinary hours the employee would have worked had the employee not been on leave during the relevant period.

27.4 Annual leave loading

During a period of annual leave an employee must also be paid a loading of 17.5% of the wages prescribed in clause 27.3.

27.5 Excessive leave

Notwithstanding s.33 of the NES, if an employer has genuinely tried to reach agreement with an employee as to the timing of taking annual leave, the employer can require the employee to take annual leave by giving not less than four weeks' notice of the time when such leave is to be taken if:

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

27.6 Paid leave in advance of accrued entitlement

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

27.7 Transmission of business

Where a business is transmitted from one employer to another, the period of continuous service that an employee had with the transmitter must be deemed to be service with the transferee and taken into account when calculating annual leave. However, an employee is not entitled to leave or payment instead of any period in respect of which leave has been taken or paid for.

27.8 Proportionate leave on termination

On termination of employment, an employee must be paid for leave accrued that has not been taken at the appropriate wage calculated in accordance with clause 27.3.

27.9 Time of taking leave

- (a) Annual leave is to be taken within six months after the annual entitlement becomes due except where otherwise agreed, unless to do so would be unreasonable in the circumstances. The employer must give one month's notice of any requirement for the employee to take accrued leave.
- (b) The employer may require annual leave to be taken during periods of business close-down or when the business cannot open due to restrictions on opening hours due to State or Federal legislation. The employer may also require leave to be taken at certain times of the year because of particular seasonal requirements.

28. Personal/carer's leave and compassionate leave

[27 renumbered as 28 by [PR990479](#)]

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

29. Community service leave

[28 renumbered as 29 by [PR990479](#)]

Community service leave is provided for in the NES.

30. Public holidays

[29 renumbered as 30 by [PR990479](#)]

30.1 Public holidays are provided for in the NES.

30.2 An employer and a majority of employees may agree to substitute another day for a public holiday. If either the public holiday or the substitute day is worked, public holiday penalties must be paid. If both days are worked, one day at the election of the employee must be paid at public holiday rates.

Schedule A—Transitional Provisions

[Sched A inserted by [PR988418](#)]

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

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 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%

First full pay period on or after

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 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%

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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 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 the transitional default casual loading or an award-based transitional instrument to pay a particular loading or penalty lower than that 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 transitional default casual loading or the loading or penalty in the relevant award-based transitional instrument for the classification concerned.

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

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

First full pay period on or after

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

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

A.6 Loadings and penalty rates – existing loading or penalty rate higher

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

- (a) was obliged,
- (b) but for the operation of an agreement-based transitional instrument 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 an award-based transitional instrument to pay a particular loading or penalty higher than that 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 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.

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

First full pay period on or after

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

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

A.7 Loadings and penalty rates – no existing loading or penalty rate

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

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:

First full pay period on or after

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

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

Schedule B—Classification Structure and Definitions

[Sched A renumbered as Sched B by [PR988418](#)]

Grade 1A

Employees in this grade have no previous experience in the industry and no formal qualifications. They carry out general nursery and labouring duties of a routine and repetitive and/or manual nature, mainly under supervision, for a period of no longer than three months.

Grade 1B

Employees in this grade have three months experience in the industry. They perform and are accountable for nursery tasks as directed within the skill levels set out below. They work within established routines, methods and procedures. Supervision is direct.

Employees may be required to train other employees in the skills of their own grade by means of personal instruction and demonstration.

Employees will be graded at this level where the principal functions of their employment, as determined by the employer, require the exercise of any one or more of the skill levels set out below:

- assisting with potting machines, seeding machines, bagging machines, transplanting machines, grading machines, etc.;
- assisting with spray application;
- cleaning;
- collecting cuttage, budwood or scions;
- flower bunching;
- general errands;
- general/labouring duties;
- grafting and budding;
- irrigation;
- labelling, stacking and preparation of stock for sale;
- mixing soil, container filling, container assembly;
- moving plants;
- order selection and assembly;
- packing shelves;
- packing plants and seedlings;
- picking and grading;

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- plant care and ground maintenance;
- potting;
- preparing and sticking cuttings;
- spacing and moving plants;
- transplanting;
- tubing;
- unloading/receiving materials;
- using towing and/or carry-all vehicles etc.;
- watering; and
- weeding.

Grade 2

Employees in this grade are capable of performing Grade 1B duties but in addition are required to perform nursery tasks using a more extensive range of skills and knowledge at a higher level than required in Grade 1B. They are responsible and accountable for their own work which is performed within established routines, methods and procedures. Supervision is routine.

Employees may be required to train other employees in the skills of their own grade and below by means of personal instruction and demonstration.

Employees will be graded at this level where the principal functions of their employment, as determined by the employer, require the exercise of any one or more of the skill levels set out below:

- answering phone;
- basic data entry;
- basic plant maintenance;
- control and maintenance of irrigation equipment;
- handling direct enquiries;
- disease and pest control;
- driving tractors with implements;
- fertigation;
- filing; and
- may be in charge of one assistant of a lower grade.

Grade 3

Employees in this grade are capable of performing Grade 1B and 2 duties but in addition are required to perform nursery tasks using a more extensive range of skills and knowledge at a

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higher level than required in Grade 2. They are responsible and accountable for their own work which is performed within established routines, methods and procedures. Supervision is routine.

Employees may be required to train other employees in the skills of their own grade and below by means of personal instruction and demonstration.

Employees will be graded at this level where the principal functions of their employment, as determined by the employer, require the exercise of any one or more of the skill levels set out below:

- correspondence (handling);
- customer service;
- forklift operator;
- invoicing;
- order acceptance;
- processing income;
- receiving money; and
- regular driver.

Grade 4—Certified tradesperson

Employees in this classification perform nursery duties using a more extensive range of skills and knowledge at a higher level than required of a Grade 3, having obtained and required to utilise the appropriate Accredited Trade Certificate or equivalent. They are responsible and accountable for their own work and may have responsibility for the work of up to three additional employees. They exercise initiative, discretion and judgment within the range of their skills and knowledge. Supervision is minimal.

Employees may be required to train other employees in the skills of their own grade and below by means of personal instruction and demonstration.

Additional duties may include:

- independent cultural decisions relevant to previous gradings (e.g. plant nutrition, merchandising, menus);
- payroll; and
- processing of incoming and outgoing invoices.

Grade 5

Employees in this classification have obtained the Accredited Trade Certificate or equivalent and perform nursery duties using a more extensive range of skills and knowledge at a level higher than that required of a Grade 4. They are responsible and accountable for their own work and may have responsibility for the work of a section or unit. They exercise initiative, discretion and judgment within the range of their skills and knowledge. Supervision is by means of reporting to senior management or proprietor.

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Employees may be required to train other employees in the skills of their own grade and below by means of personal instruction and demonstration.

Employees will be classified at this level where the principal functions of their employment, as determined by the employer, require the exercise of any one or more of the skill levels set out below:

- ability to use a variety of computer packages (this may include, but not limited to, desktop publishing, spreadsheets, word processing, databases, etc.);
- allocation of accounts;
- co-ordination of production programs;
- creditor/debtor reconciliation;
- data reconciliation;
- design & implement fertiliser programs and pest control programs;
- design, install and use irrigation systems;
- landscape consultation and/or design;
- ordering stock;
- planning, co-ordination and implementation of nursery maintenance programs;
- preparation of daily reports;
- set targets; and
- set shift rosters.

Grade 6

Employees in this classification have obtained the Accredited Trade Certificate or equivalent and perform nursery duties using a more extensive range of skills and knowledge at a level higher than that required of a Grade 5. They are responsible and accountable for their own work and may have responsibility for the work of a section. They exercise initiative, discretion and judgment within the range of their skills and knowledge. Supervision is by means of reporting to management or proprietor.

Employees may be required to train other employees in the skills of their own grade and below by means of personal instruction and demonstration.

Employees will be classified at this level where the principal functions of their employment, as determined by the employer, require the exercise of any one or more of the skill levels set out below:

- analysing data;
- dispatch;
- key performance indicators for annual performance targets;
- monthly and annual reports;

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- nursery manager;
- production planner;
- propagator (person appointed to take responsibility for control of propagating environments, scheduling propagation, selecting cuttage, budwood and other propagules); and
- senior grower or head grower.

Schedule C—National Training Wage

[Sched B renumbered as Sched C by [PR988418](#)]

Schedule D—Supported Wage System

[Sched C renumbered as Sched D by [PR988418](#)]

D.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.

D.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

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

D.3 Eligibility criteria

D.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.

D.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.

D.4 Supported wage rates

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

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

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

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

D.5 Assessment of capacity

D.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.

D.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.

D.6 Lodgement of SWS wage assessment agreement

D.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.

D.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.

D.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.

D.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.

D.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.

D.10 Trial period

D.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.

D.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.

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

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

D.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 D.5.