

Marine Tourism and Charter Vessels Award 2010

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Part 1—Application and Operation

1. Title

This award is the *Marine Tourism and Charter Vessels 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)

Commission means the Australian Industrial Relations Commission or its successor

employee has the meaning in the Act

employer has the meaning in the Act

Engineer means a marine engineer

enterprise award has the meaning in the Act

Marine Tourism and Charter Vessel Industry means the operation of vessels engaged wholly or principally as a tourist, sightseeing, sailing or cruise vessel and/or as a place of or for entertainment, functions, restaurant/food and beverage purposes engaged in the provision of water orientated tourism, leisure and/or recreational activities but does not include the operation of ferries engaged in regular scheduled passenger and/or commuter transport.

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

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 Engineer (vessels 20 m and over) in clause 13—Minimum 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 Marine Tourism and Charter Vessels Industry and their employees in the classifications listed in clause 13—Minimum wages to the exclusion of any other modern award.
- 4.2** The award does not cover an employee excluded from award coverage by the Act.
- 4.3** The award does not cover an employer bound by an enterprise award with respect to any employee who is covered by the enterprise award.
- 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:

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- (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. Types of employment

10.1 Full-time employment

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

10.2 Part-time employment

- (a) An employee may be engaged to work on a part-time basis involving a regular pattern of hours which averages less than 38 ordinary hours per week.
- (b) A part-time employee must be engaged for a minimum of two consecutive hours a day. In order to meet their personal circumstances, a part-time employee may request and the employer may agree to an engagement for less than the minimum of two hours.
- (c) All terms of this award will apply pro rata to part-time employees.
- (d) Where the part-time employee's normal rostered hours fall on a public holiday prescribed in the NES and work is not performed by the employee, such employee must not lose pay for the day.

10.3 Casual employment

- (a) A casual employee is one engaged and paid as such. A casual employee for working ordinary time must be paid the relevant minimum wage plus a casual loading of 25% with a minimum payment of two hours. The loading is payable as a flat loading for all hours worked and is not compounded.
- (b) An employer when engaging a casual must inform the employee that they are employed as a casual, stating by whom the employee is employed, the classification level and rate of pay and the likely time periods required.

- 10.4** Casual employees will be paid pro rata the daily allowances provided in clauses 14.5 and 14.6 applicable to the vessel and classification on or in which the employee is engaged for the time being not the rate applying to the ticket they hold, e.g. Master IV ticket on a Coxswain vessel is paid Coxswain wage. The employer must specify to the employee at the outset of employment whether the engagement is on a full-time, part-time or casual basis.

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

Part 4—Minimum Wages and Related Matters

13. Minimum wages

13.1 Adult employee minimum wages

- (a) The classifications and minimum wages for full-time adults are set out in the following table:

Classification	Weekly minimum wage
	\$
Crew Level 1	
Crew Level 2	
Crew Level 3	
Dive master/Diver instructor	
Engineer 1	
Engineer 2	
Engineer 3	
Coxswain	
Master 1	
Master 2	
Master 3	
Master 4	

- (b) For the purposes of clause 13.1(a), any entitlement to a minimum wage expressed to be by the week means any entitlement which an employee would receive for performing 38 hours of work.

- (c) The wage rates set above have been calculated to include compensation for weekend and public holiday penalties.

13.2 Junior employee minimum wages

Junior employees are entitled to the following percentages of the relevant minimum wage:

Junior age	% of relevant minimum wage
Under 18 years	90
18 years and over	100

- 13.3** An employee under 21 years of age who holds a Master's Certificate and is employed to perform the duties of a master will be paid the relevant minimum wage for a master.

13.4 Supported wage system

See Schedule B

13.5 National training wage

See Schedule C

14. Allowances

14.1 Living away from home

- (a) Whilst away from home port (other than day trips), every employee will be provided with:

- (i) proper meals;
- (ii) a bed; and
- (iii) clean linen once a week. The employer will be responsible for the laundering of such linen.

- (b) Meals, tea, sugar, milk and coffee will be provided on all vessels for employees at the employer's expense on such trips.

14.2 Meals on overtime

When an employee, including a casual, is required to work overtime in excess of one and a half hours before or after the usual commencing time, the employee will be provided free of cost with a suitable meal and will be provided with a further suitable meal every four hours thereafter while overtime continues or be paid instead the amount of \$9.63.

14.3 Uniform allowance

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

14.4 Compensation for personal effects

If, by fire, explosion, foundering, shipwreck, collision, stranding or any other cause whatsoever not attributable to the employee's neglect, an employee should sustain damage to or loss of their personal effects or equipment, such equipment being necessary for the performance of their duties, the employer will compensate the employee for such damage or loss by cash payment equivalent to the value thereof to a maximum of \$966.64, provided that this amount or any part thereof will not be payable where loss is recovered through workers compensation insurance.

14.5 MED certificate

Excluding Engineers, employees required to hold a Marine Engine Driver's (MED) certificate are to be paid a daily allowance for the duration of each voyage, charter or tour as follows:

Certificate	Daily Allowance
	\$
MED II	[20.60]
MED III	[10.30]

14.6 Outer reef work

Where the itinerary requires outer reef work a master is to be paid a daily outer reef allowance of \$10.30 for the duration of the voyage/charter or tour.

14.7 Adjustment of expense related allowances

- (a) At the time of any adjustment to the standard rate, each expense related allowance will be increased by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.
- (b) The applicable index figure is the index figure published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index (Cat No. 6401.0), as follows:

Allowance	Applicable Consumer Price Index figure
Meal allowance	Take away and fast foods sub-group
Uniform	Clothing and footwear group
Compensation for personal effects	All groups

15. District allowances

15.1 Northern Territory

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

- (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.

15.2 Western Australia

An employee in Western Australia 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.

15.3 This clause ceases to operate on 31 December 2014.

16. Accident pay

16.1 Subject to clause 16.2, 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.

16.2 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.

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

16.4 This clause ceases to operate on 31 December 2014.

17. Higher duties

17.1 An employee who is required to do work for which a higher rate is fixed than that provided for their ordinary duties will, if such work exceeds a total of four hours on any day, be paid for all work done on such day at the higher rate.

17.2 If such work does not exceed four hours on any day the employee will be paid the higher rate for the actual time worked.

18. Payment of wages

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

19. Superannuation

19.1 Superannuation legislation

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

19.2 Employer contributions

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

19.3 Voluntary employee contributions

- (a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 19.2.
- (b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.
- (c) The employer must pay the amount authorised under clauses 19.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 19.3(a) or (b) was made.

19.4 Superannuation fund

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

- (a) Sunsuper; or
- (b) R.E.S.T; or
- (c) any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund is an eligible choice fund.

19.5 Absence from work

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

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

Part 5—Hours of Work and Related Matters

20. Ordinary hours of work and rostering

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

20.2 Ordinary hours of work are an average of 38 in a maximum of 20 days over a 28 day cycle.

20.3 For employees not engaged on an overnight charter the ordinary hours may be worked on any day of the week Monday to Sunday between the hours of 6.00 am and 2.00 am the next day in any week mutually agreed upon between an employer and employee or of which period the employer has given at least 14 days' written notice to the employee. Ordinary hours for employees on an overnight charter are to be worked in accordance with clause 20.4.

20.4 [Provisions to be developed]

20.5 Employees must not be rostered to work within 10 hours of the cessation of their previous rostered charter or trip. If an employee is required to work without having had 10 consecutive hours off duty the employee must be paid double the relevant minimum wage until released from rostered duty. The employee will be entitled thereafter to be absent until the employee has had 10 consecutive hours off rostered duty without loss of pay for ordinary working time occurring during such absence.

20.6 Rest Day

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

20.7 Make-up Time

- (a) An employee may elect, with the consent of the employer, to work make-up time, under which the employee takes time off ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the award, at the ordinary rate of pay.
- (b) An employee on shiftwork may elect, with the consent of the employer, to work make- up time at the shiftwork rate which would have been applicable to the hours taken off.

21. Breaks

21.1 Meal Breaks

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

21.2 Rest Pauses

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

22. Overtime and penalty rates

All time worked in excess of 12 hours per day, the average ordinary hours per week or in excess of 20 days in a 28 day cycle is overtime and must be paid at one and a half times the

relevant minimum wage for the first two hours and double the relevant minimum wage thereafter calculated hourly.

Part 6—Leave and Public Holidays

23. Annual leave

23.1 Annual leave is provided for in the NES.

23.2 Conversion to hourly entitlement

An employer may reach agreement with the majority of employees concerned to convert the annual leave entitlement in s.32 of the NES to an hourly entitlement for administrative ease (i.e. 152 hours for a full-time employee entitled to four weeks of annual leave).

23.3 Payment of annual leave

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

23.4 Excessive leave

Notwithstanding s.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.

23.5 Paid leave in advance of accrued entitlement

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

23.6 Payment of holiday loading on Termination

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

24. Personal/carer's leave and compassionate leave

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

25. Community service leave

Community service leave is provided for in the NES.

26. Public holidays

26.1 Public holidays are provided for in the NES.

26.2 Employees other than employees engaged on a daily basis required to work on Christmas Day will be paid treble time for a minimum of four hours.

26.3 Weekly employees required to work on public holidays, other than Christmas Day (in respect of which the provisions of subclause 26 of this clause apply), will be paid ordinary time and have an extra day added to their annual leave entitlement or, alternatively, be paid double time for such work.

Schedule A—Classification Structure and Definitions

A.1 Application of this Schedule.

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

A.2 Classification structure—employees engaged on a daily basis

[Definitions to be developed]

A.2.1 Crew Level 1

A.2.2 Crew Level 2

A.2.3 Crew Level 3

A.2.4 Dive Master/Diver Instructor

A.2.5 Engineer 1

A.2.6 Engineer 2

A.2.7 Engineer 3

A.2.8 Coxswain

A.2.9 Master 1

A.2.10 Master 2

A.2.11 Master 3

A.2.12 Master 4

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

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:

Assessed capacity (clause B.5)	Relevant minimum wage
%	%
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.

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.

Schedule C—National Training Wage