

Horticulture Industry Award 2010

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Part 1—Application and Operation

1. Title

This award is the Horticulture Industry 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.

enterprise award has the meaning in the Act.

harvest period means that period of time during which the employees of a particular employer are engaged principally in the harvesting, picking, dehydration, crystallisation, treating, storing, grading, packing or despatching of any horticulture products or crops, including fruits or vegetables, as the case may be.

horticulture industry means the principal activity of the employer involved in the growing of horticulture products and crops and work associated with the above.

horticulture products and crops includes all types of vegetables and fruits (including viticulture/grapes (dried, table and wine) and olives), herbs, horticulture seeds, hops, nuts, fungi and other specialised horticulture crops.

NES means National Employment Standards.

pieceworker base rate of pay means the base rate of pay contained in this award for an employee of equivalent classification, level and engagement to a particular pieceworker (who is not them self a pieceworker).

pieceworker full rate of pay is the full rate of pay contained in this award for an employee of equivalent classification, level and engagement to a particular pieceworker (who is not them self a pieceworker).

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 a level 2 employee. This rate is to be used for the purposes of calculating various allowances that require a designated standard rate.

time critical period means the harvest period or any other period of time when the plant, crop, fruit or product must have a function performed to enable that plant, crop, fruit or product to remain a commercially viable product for the employer concerned. A time critical period is a period that cannot be reasonably predicted in advance by the employer and arises out of the inherent requirement to perform the function at that time.

weekly employee means an employee engaged on a full-time or part-time basis under either clause 10 or 11 of this award.

3.2 Where this award deals with a matter provided for in the NES, the NES definition applies.

4. Application

4.1 This award applies throughout Australia to all employers engaged in the horticulture industry or engaged in the provision of services to the horticulture industry in respect of work in the horticulture industry by their employees who are engaged in the classifications contained in this award to the exclusion of any other modern award.

4.2 For the purposes of clause 4.1, this award applies to employees employed in the horticulture industry who are engaged in activities including the following:

- (a) upon farms, orchards, plantations or vegetable cultivations in connection with the sowing, planting, raising, cultivation, harvesting, picking, or treating of horticulture products and crops; or
- (b) clearing, fencing, trenching, draining or otherwise preparing or treating land or other growing medium for the sowing, raising, harvesting or treating of horticulture products and crops, including fruit and vegetables; or
- (c) storing, grading, dehydration, crystallization, processing, packing, despatching or forwarding of horticulture products and crops **[on or from farm]**; or
- (d) producing compost for, cultivating, picking, preparing for packing, packing and/or forwarding of fungi or mushrooms; or
- (e) silviculture or afforestation where it is performed in conjunction with other activities specified in this clause 4.2.

4.3 Horticulture Industry does not mean:

- (a) any work in or in connection with sugar farming or sugar cane growing, sugar milling, sugar refining, sugar distilleries and/or sugar terminals; or
- (b) any work in or in connection with the cotton growing or harvesting; cotton ginneries and associated depots; cotton oil mills and the extraction of oil from seed.

4.4 This award does not apply to:

- (a) an employer to whom another modern industry or occupation award applies in respect of an employee to whom that other award applies or such an employee; or
- (b) an employee excluded from award coverage by the Act.

4.5 This award is binding on the employers and employees to whom it applies but does not bind an employer who is bound by an enterprise award in respect of an employee to whom the enterprise award applies.

4.6 Where an employer is engaged in more than one industry to which an industry award applies an employee of that employer is deemed to be in the classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work, regardless of the industry award in which the classification appears.

5. Access to the award

The employer must ensure a copy of this award and the NES are accessible to all employees to whom they apply either on a noticeboard which is conveniently located at or near the workplace or through electronic means. Employers shall separately display the rates of pay in respect of this award and the current monetary equivalents of allowances expressed as percentages in this award in a place notified to employees. The employer shall also supply a copy of the rates of pay and monetary equivalents of allowances expressed as percentages to employees on request.

6. The National Employment Standards and this award

The NES and this award combine to form the minimum conditions of employment for employees to whom this award applies.

7. Award flexibility

7.1 Notwithstanding any other provisions 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) not disadvantage the individual employee in relation to the individual employee's terms and conditions of employment.

7.4 For the purposes of clause 7.3(b) the agreement will be taken not to disadvantage the individual employee in relation to the individual employee's terms and conditions of employment if:

(a) the agreement does not result, on balance, in a reduction in the overall terms and conditions of employment of the individual employee under this award and any applicable agreement made under the Act, as those instruments applied as at the date the agreement commences to operate; and

(b) the agreement does not result in a reduction in the terms and conditions of employment of the individual employee under any other relevant laws of the Commonwealth or any relevant laws of a State or Territory.

7.5 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 does not disadvantage the individual employee in relation to the individual employee's terms and conditions of employment; and

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

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

7.7 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.

7.8 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

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 representative, if any.

(b) Significant effects include termination of employment, major changes in 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 the award makes provisions for alteration of any of the matters referred to herein 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 representative, if any, the introduction of the changes referred to in clause 8.1 of this award and the effects the changes are likely to have on employees, 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 representative in relation to the change.

(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 of this award.

(c) For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representative, 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 in relation to a matter arising under this award, or the NES, in the first instance the parties will attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor (who may not be the direct supervisor of the employee concerned). If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute by discussions between the employee or employees concerned and more senior levels of management as appropriate.

9.2 If a dispute in relation to a matter arising under this award or 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 for conciliation, and if conciliation is unsuccessful, arbitration.

9.3 If arbitration is necessary the Commission may exercise procedural powers in relation to hearings, witnesses, evidence and submissions as are necessary to make the arbitration effective.

9.4 However the parties may agree, on an alternative process to be utilised by the Commission including mediation, conciliation and consent arbitration. Non-agreement will not limit any powers of the Commission under this clause.

9.5 To avoid any doubt, an employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause. A person or organisation so appointed may exercise all rights under this clause including notification of a dispute. A representative as referred to includes a representative of a trade union, including a delegate.

9.6 While the dispute resolution procedure is being conducted, work must continue as normal before the matter in dispute arose unless an employee has a reasonable concern about an imminent risk to his or her health or safety. Subject to applicable occupational health and safety legislation, an employee must not unreasonably fail to comply with a direction by the employer to perform other available work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

9.7 The parties must co-operate to ensure that the dispute resolution procedure is carried out in a timely manner and in good faith.

Part 3—Types of Employment and Termination of Employment

10. Full-time employment

10.1 A full-time employee is an employee who is engaged on a weekly basis to work an average of 38 hours per week or a lower number of hours regarded as the full-time hours at the particular workplace.

10.2 At the time of engagement an employer will inform each employee of the terms of their engagement and whether they are to be full-time.

10.3 A full-time employee shall be provided with a written statement setting out their classification, applicable pay scale and terms of engagement.

11. Part-time employment

11.1 A part-time employee is an employee who is engaged weekly on a regular and systematic basis to perform less than the full-time hours of 38 per week at the workplace; and receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.

11.2 An employee who does not meet the definition of a part-time employee in clause 11.1 and who is not a full-time employee in accordance with clause 10.1 will be engaged and paid as a casual employee in accordance with clause 12.

11.3 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 worked each day and which days of the week the employee will work.

11.4 Changes in hours may only be made by agreement in writing between the employer and employee. Any agreed variation to the regular pattern of work will be recorded in writing. A part-time employee will be entitled to payment for annual leave, long service leave, public holidays, sick leave and bereavement leave pursuant to this award on an appropriate basis to that of the equivalent full-time employee.

11.5 The spread of ordinary working hours will be the same as those prescribed for weekly employees.

11.6 All time worked in excess of the hours mutually arranged will be overtime and paid for at the appropriate overtime rate.

11.7 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.

12. Casual employment

12.1 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 hours of work, their classification level and their rate of pay. Casual employees are not weekly employees for the purposes of this award.

12.2 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 a 20% casual loading.

12.3 On each occasion a casual employee is required to attend for work, casual employees are entitled to a minimum payment of two hours' work at the appropriate rate.

12.4 Casual employees receive a rate of pay that incorporates a casual loading which is a payment in lieu of annual leave, leave loading, public holidays, sick leave, long service leave, notice of termination, redundancy and lack of continuity of employment.

13. Piece work

13.1 Notwithstanding clause 16 or any other clause of this award, where an employee is engaged as a pieceworker, the employee will be paid at a piece rate of pay rather than a minimum basic rate of pay.

13.2 The piece rate of pay paid to a pieceworker:

(a) will be paid in lieu of the basic rate of pay for all hours worked by the employee; and

(b) must enable the average pieceworker (at the enterprise concerned), working the ordinary hours prescribed by this award, to earn at least 12.5% more than the basic rate of pay for equivalent employees set out in clause 16.

14. Termination of employment

14.1 Notice of termination is provided for in the NES. The entitlement to notice of termination set out in the NES does not apply to casual employees or to casual pieceworkers.

14.2 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 has the right to withhold pay to a maximum amount equal to the amount the employee would have received under the terms of the NES.

14.3 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 must be taken at times that are convenient to the employee after consultation with the employer.

14.4 Notice for Pieceworkers

For the purposes of the NES, the full rate of pay for a pieceworker is the pieceworker full rate of pay as defined in clause 3.1.

15. Redundancy

15.1 Redundancy pay is provided for in the NES.

15.2 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 and the new ordinary time rate for the number of weeks of notice still owing.

15.3 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 15 had they remained in employment until the expiry of the notice, but is not entitled to payment in lieu of notice.

15.4 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 the entitlement under clause 14.3.

15.5 Pieceworkers

For the purposes of the NES, the base rate of pay for a pieceworker is the pieceworker base rate of pay as defined in clause 3.1.

Part 4—Minimum Wages and Related Matters

16. Classifications and adult minimum wages

16.1 Adult employee minimum wages

(a) The classifications and minimum wages for an adult employee, other than one specified in clause 16.1(c), are set out in the following table:

Classification level	Minimum weekly wage	Minimum hourly wage
1	543.78	14.31
2	560.50	14.75
3	577.22	15.19
4	600.02	15.79
5	637.64	16.78

(b) For the purposes of clause 16.1(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 following adult employees are not entitled to the minimum wages set out in the table in clause 16.1(a):

- an employee receiving a supported wage (refer to Schedule C); and
- an employee covered by clauses 17 or 18.

16.2 Mixed functions

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

17. Training Wage

Training Wage arrangements are contained in Schedule B of this award.

18. Junior wages

Junior employees must be paid the following percentage of the appropriate wage rate in clause 16.

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%

20. Supported wage system

The supported wage system for an employee with a disability is contained in Schedule C.

21. Allowances and special rates

21.1 All-purpose allowances

The following allowances apply for all purposes of this award:

(a) Leading Hands

A leading hand in charge of three or more people must be paid the additional allowance contained in this table. This allowance is payable on a weekly basis:

Amount of the standard rate per week	
In charge of 2 to 6 employees	115%
In charge of 7 to 10 employees	134%
In charge of 11 to 20 employees	191%
In charge of more than 20 employees	240%

Other allowances

(b) 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's Ambulance or similar body must be paid 86% of the standard rate. This allowance is to be paid weekly where the employee has been appointed by their employer to perform first aid duty.

(c) 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 a second meal break another meal, provided that in the event of the meal not being supplied the employee is entitled to a payment of \$9.65 per week extra for each meal not supplied.

(d) Formula for Increasing the Meal Allowance

This rate shall be updated in line with the “meals out and take away foods” CPI figure for June each year published by the Australian Bureau of Statistics in catalogue number 6401.0. The increase is based on the percentage change from the “meals out and take away foods” CPI figure for June in the previous year. In the case of a decrease in the “meals out and take away foods” CPI figure over the period, no update will be made to the rate. The varied rate takes effect from 1 October each year.

(e) Wet work allowance

An employee who, on any one day, is required to work in a wet place must be paid an amount of 5% of the standard rate for each hour that they are required to work in the wet place, unless provided with adequate protection. A wet place shall mean a place where the clothing of the employee becomes saturated or a place where the employee has to stand in water or slush so that the employee’s feet become wet.

(f) Tool and equipment allowance

The employer shall reimburse the employee for the actual cost of supplying their own tools and equipment if such tools and equipment are not provided by the employer.

22. Payment of wages

22.1 Period of payment

Wages must be paid weekly or fortnightly according to the actual ordinary hours worked each week or fortnight or according to the applicable piecework payment.

22.2 Method of payment

Wages must be paid by cash, cheque or electronic funds transfer into the employee’s 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 by post on the next working day.

23. Superannuation

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.

(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 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) at the same time as the employer makes the superannuation contributions provided for in clause 23.2.

Part 5—Hours of Work and Related Matters

24. Ordinary hours of work and rostering

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 weekly workers are an average of 38 per week but not exceeding 152 hours in 28 days.

(b) Subject to this clause, the ordinary hours of work will not exceed ten hours on any day, provided that:

(i) in any arrangement of ordinary working hours where the ordinary working hours are to exceed ten on any day, the arrangement of hours will be subject to the agreement of the employer and the majority of employees in the plant or section or sections concerned;

(ii) by arrangement between an employer and an employee, ordinary working hours greater than ten but not exceeding twelve on any day may be worked subject to:

- the employer and employees concerned being guided by relevant Occupational Health and Safety provisions; and
- proper health monitoring procedures being introduced; and
- suitable roster arrangements being made.

(c) Any work performed by weekly employees outside the ordinary hours must be paid for at overtime rates.

(d) Unless otherwise agreed between the parties, agreement may be reached at the plant, section or individual level to:

- work shorter hours each day; or
- work shorter hours on one or more days; or
- rostering days off on various days of the week so that each employee has one or more days off during that cycle.

Alternative to above clause 24

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 weekly workers are an average of 38 per week but not exceeding 152 hours in 28 days.

(b) Subject to this clause, the ordinary hours of work will not exceed ten hours on any day, provided that:

(i) in any arrangement of ordinary working hours where the ordinary working hours are to exceed ten on any day, the arrangement of hours will be subject to the agreement of the employer and the majority of employees in the plant or section or sections concerned;

(ii) by arrangement between an employer and an employee, ordinary working hours greater than ten but not exceeding twelve on any day may be worked subject to:

- the employer and employees concerned being guided by relevant Occupational Health and Safety provisions; and
- proper health monitoring procedures being introduced; and
- suitable roster arrangements being made.

(c) The ordinary hours of work may be worked on any five out of seven days.

(d) Any work performed by weekly employees outside the ordinary hours must be paid for at overtime rates.

(e) Unless otherwise agreed between the parties, agreement may be reached at the plant, section or individual level to:

- work shorter hours each day; or
- work shorter hours on one or more days; or
- rostering days off on various days of the week so that each employee has one or more days off during that cycle.

(f) Time Critical Period

Notwithstanding the provisions of clauses 24.2 (b), (c) and (d) where there is a requirement for work in a time critical period (as defined in clause 3.1) then that time worked may be paid at for at ordinary time rates.

25. Meal and rest breaks

25.1 An unpaid meal break of not less than 30 minutes nor 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 double time rates. Such payment will continue until the employee is released for a meal break of not less than thirty minutes.

25.3 Employees will be allowed a paid rest pause of ten minutes each morning. Where agreement is reached between the employer and employee for additional rest pauses, such rest pauses will be unpaid and in addition to the employee's ordinary hours of work.

26. Standing by

An employee ordered to stand-by for duty will be paid at ordinary rates for the whole period of such stand-by until released or work commences.

27. Overtime

27.1 Overtime will be adjusted as follows:

(a) The employee will be allowed time off duty, with pay, for a period equal to the overtime worked; or

(b) In lieu of taking time off duty, the employee may elect to be paid for the overtime worked providing this election is made clear to the employer or employer's representative at the time that overtime is offered.

27.2 Payment for working overtime on Saturdays and Sundays

(a) The rate of pay for overtime will be time and a half, and double time will be paid for all overtime work performed on Sunday except during the time critical period (as defined in clause 3.1) when the first eight hours of overtime in that week may include five hours work on a Sunday at the rate of time and a half but all Sunday work in excess of the eighth overtime hour worked in the week or in excess of five hours on that day will be paid for at the rate of double time.

(b) All employees required to work on a Sunday will be paid for a minimum of two hours.

(c) The provisions of this clause 27.2 do not apply to pieceworkers.

27.3 Payment for working on Public Holidays

All work (other than piecework) performed on public holidays will be paid for at the rate of double time, but by mutual consent it may be remunerated by time off in lieu.

27.4 Call back

An employee recalled to work for overtime after leaving the employer's business premises will be paid for a minimum of two hours work at the appropriate rate for each time so recalled. Provided that, in the case of unforeseen circumstances arising, the employee will not be required to work the full two hours if the job for which the employee was recalled is completed within a shorter period. This clause 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.

27.5 Requirements to work reasonable overtime

(a) Subject to clause 27.5(b), an employer may require an employee to work reasonable overtime at overtime rates.

(b) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:

- (i) any risk to employee health and safety;
- (ii) the employee's personal circumstances including any family responsibilities;
- (iii) the needs of the workplace or enterprise;
- (iv) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
- (v) any other relevant matter.

Part 6—Leave and Public Holidays

28. Annual leave

28.1 Annual leave is provided for in Division 5 of the NES. Annual leave does not apply to a casual employee or a casual pieceworker.

28.2 Conversion to hourly entitlement

An employer may reach agreement with the majority of employees concerned to convert the annual leave entitlement in section 32 of the NES to an hourly entitlement for administrative ease

28.3 Payment for period of annual leave

(a) Instead of the base rate of pay as referred to in s.35(1) of the NES, 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.

(b) Subject to clause 28.3(c), an employee employed on bonus work or any other system of payment by results must be paid the rate which is the weekly average of payments made to the employee for the period actually in respect of which such payments have been calculated prior to the time of going on leave or termination of employment, as the case may be during any period of annual leave.

(c) For the purposes of the NES, the base rate of pay for a pieceworker is the pieceworker base rate of pay as defined in clause 3.1.

28.4 Annual leave loading

(a) During a period of annual leave an employee must also be paid a loading calculated on the wages prescribed in clause 28.3.

(b) An employee must be paid an annual leave loading equal to 17½% of the wages prescribed in clause 28.3.

28.5 Excessive leave

Notwithstanding section 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.

28.7 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.

28.8 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 in lieu for any period in respect of which leave has been taken or paid for.

28.9 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 28.3.

29. Personal/carer's leave and compassionate leave

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

For the purposes of the NES, the base rate of pay for a pieceworker is the pieceworker base rate of pay as defined in clause 3.1.

30. Community service leave

30.1 Community service leave is provided for in the NES.

30.2 For the purposes of the NES, the base rate of pay for a pieceworker is the pieceworker base rate of pay as defined in clause 3.1.

31. Public holidays

31.1 Public holidays are provided for in the NES.

31.2 Public holidays which fall on a weekend

(a) Where Christmas Day falls on a Saturday or a Sunday, 27 December is observed as the public holiday in lieu of the prescribed day.

(b) Where Boxing Day (Proclamation Day in South Australia) falls on a Saturday or a Sunday, 28 December is observed as the public holiday in lieu of the prescribed day.

(c) Where New Year's Day or Australia Day falls on a Saturday or a Sunday, the following Monday is observed as the public holiday in lieu of the prescribed day.

31.3 Substitution of certain public holidays by agreement at the enterprise

(a) By agreement between the employer and the majority of employees in the enterprise or part of the enterprise concerned, an alternative day may be taken as the public holiday in lieu of any of the prescribed days.

(b) An employer and an individual employee may agree to the employee taking another day as the public holiday in lieu of the day which is being observed as the public holiday in the enterprise or part of the enterprise concerned.

Schedule A—Classification structure and definitions

Level 1 employee means an employee classified in accordance with the following criteria:

General description

An employee at this level:

- Undertakes induction training which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career opportunities, plant layout, work and documentation procedures, occupational health and safety, equal employment opportunity and quality control/assurance;
- Performs routine duties essentially of a manual nature and to the level of their training;
- Exercises minimal judgement;
- Works under direct supervision;
- Is responsible for the quality of their own work.

Points of entry

- New employee;
- Existing employee performing work within this grade who is undertaking in order to progress to Level 2.

Indicative duties

Indicative of the duties an employee may perform at this Level are:

- Performs general labouring duties;
- Fruit or vegetable picking, thinning or pruning;
- Operates small towing tractor engaged in transfer of produce bins and other containers during harvest;
- Performs a range of routing housekeeping tasks in premises and grounds;
- Sorting, packing or grading of produce where this requires the exercise of only minimal judgement;
- Performs basic recording functions related to work performed at this level;
- Provides assistance within the scope of this level to other employees as required;
- May be undertaking structured training to enable entry into Level 2.

Promotional criteria

An employee remains at this level until they demonstrate competency through assessment or appropriate certification in Level 1 and Level 2 skills required at the enterprise and may then progress to Level 2 as a position becomes available.

Level 2 employee means an employee classified in accordance with the following criteria:

General description

An employee at this level:

- Has completed up to three months structured training so as to enable the performance of work within the scope of this level;
- Works under general supervision either individually or in a team environment;
- Works with established routines, methods and procedures;

- Performs a range of tasks involving the use of skills above and beyond those of Level 1 and to the level of their training;
- Exercises limited discretion;
- Is responsible for the quality of their own work;
- Receives training in Occupational Health and Safety standards and practices relevant to the site;
- Performs lower level tasks as required without loss of pay unless re-engaged to perform tasks at predominantly a lower skill level.

Points of entry

- An existing employee who advances by satisfying the promotional criteria defined at Level 1 and is selected by the employer to fill a position at this level;
- A new employee selected for a position at this level after demonstrating through assessment or appropriate certification to the employer's satisfaction, competence in the skills required in the establishment at this level.

Indicative duties

Indicative of the duties an employee may perform at this level are:

- Performs a range of tasks involving the set up and operation of production and/or packaging or picking equipment, labelling and/or consumer picking equipment;
- Repetition work on automatic, semi-automatic or single purpose machines or equipment;
- Assembles/dismantles components using basic written, spoken and/or diagrammatic instructions in an assembly environment;
- Irrigation, spraying or pruning under general supervision;
- Sorting, packing and grading beyond the scope of Level 1 duties;
- Maintains simple records;
- Uses hand trolleys, pallet trucks or other mechanical or power driven lifting or handling devices not requiring a licence;
- Operates tractors with engine capacity of up to 70 kW;
- General and routine product testing;
- Provides assistance within the scope of this level to other employees as required;
- Assists in the provision of on-the-job training in conjunction with supervisors, tradespersons or trainers;
- May undertake training to enable entry into Level 3.

Promotional criteria

An employee remains at this level until they demonstrate competency through assessment or appropriate certification in Level 3 skills required at the enterprise and may then progress to Level 3 as a position becomes available.

Level 3 employee means an employee classified in accordance with the following criteria:

General description

An employee at this level:

- Performs work above and beyond the skills of an employee at Level 2 and to the level of their training;
- Works under routine supervision either individually or in a team environment;
- Exercises discretion with their level of skills and training;
- Is responsible for the quality of their own work;

- Receives Occupational Health and Safety standards and practices in work areas relevant to the site and appropriate to this award;
- May perform any lower level task as required without loss of pay.

Points of entry

- An existing employee who advances by satisfying the promotional criteria specified at Level 2 and is selected by the employer to fill a position at this level;
- A new employee selected for a position at this level after demonstrating to the employer's satisfaction by assessment or appropriate certification competency in the skills required with the establishment for Level 3 employees.

Indicative duties

Indicative of the duties an employee may perform at this level are:

- Driving motor lorries or mechanical harvesters or forklifts;
- Operates tractors with engine capacity of over 70 kW;
- Minor maintenance of plant;
- Irrigation, spraying, pruning without supervision;
- Assists in the training, instruction and coordination of employees;
- Records detailed information on production and quality indicators;
- Provides assistance within the scope of this level to other employees;
- Undertakes further training so as to enable advancement to Level 4.

Promotional criteria

An employee remains at this level until they demonstrate competency through assessment or appropriate certification in Level 4 skills required at the enterprise and may then progress to Level 4 as a position becomes available.

Level 4 employee means an employee classified in accordance with the following criteria:

General description

An employee at this level:

- Performs work above and beyond the skills of an employee at Level 3 and to the level of their training;
- Coordinates work in a team environment or works individually under general supervision;
- Exercises discretion with their level of skills and training;
- Is responsible for the quality of their own work;
- Has knowledge of the employer's operation as it relates to production process;
- Monitors the application of Occupational Health and Safety standards in work areas relevant to the site and appropriate to this level;
- May perform any lower level task as required without loss of pay.

Points of entry

- An existing employee who advances by satisfying the promotional criteria specified at Level 3 and is selected by the employer to fill a position at this level;
- A new employee selected for a position at this level after demonstrating to the employer's satisfaction by assessment or appropriate certification competency in the skills required with the establishment for Level 4 employees.

Indicative duties

Indicative of the duties an employee may perform at this level are:

- Uses precision measuring instruments;
- Machine setting, loading and operation;
- Inventory and store control;
- Licensed operation of all appropriate materials handling equipment;
- Basic engineering and fault handling;
- Basic non-trades maintenance involving the use of tools and equipment within the scope of this award;
- Licensed and certified to operate forklifts, engine driving and crane driving operation;
- Furnace/boiler operator;
- Performs quality checks on the work of others;
- Quality assurance/control;
- Assists in provision of on-the-job training;
- Monitors variables affecting production yields, detects errors, investigates causes and recommends collective/preventative action;
- Provides assistance within the scope of this level to other employees;
- Undertakes further training so as to enable advancement to Level 5.

Promotional criteria

An employee remains at this level until they demonstrate competency through assessment or appropriate certification in Level 5 skills required at the enterprise and may then progress to Level 5 as a position becomes available.

Level 5 employee means an employee classified in accordance with the following criteria:

General description

An employee at this level:

- Works above and beyond the skills of an employee at Level 4 and to the level of their training;
- Performs work under minimal supervision either individually or in a team environment;
- Coordinates and schedules approved work in a team environment;
- Exercises good interpersonal communication skills;
- Exercises discretion within the scope of this grade;
- Possesses and uses a trade qualification in the course of their duties;
- Has a sound knowledge of the employers' operation as it relates to the production process;
- Undertakes lower level tasks as required without loss of pay.

Points of entry

- An existing employee who advances by satisfying the promotional criteria specified at Level 4 and is selected by the employer to fill a position at this level;
- A new employee selected for a position at this level after demonstrating to the employer's satisfaction by assessment or appropriate certification competency in the skills required at the enterprise for Level 5 employees.

Indicative duties

Indicative of the duties an employee may perform at this level are:

- Inspects products and/or materials for conformity with established operational standards and approves/passes first off samples;
- Operates, sets up and adjusts maintenance functions including (but not limited to):
- removing equipment fastenings including use of destructive cutting equipment;
- running adjustments to production equipment;
- Operates all lifting equipment;
- Basic production scheduling and materials handling within the scope of production process or directly related functions;
- Exercises high level stores and inventory responsibilities;
- Provides on-the-job training;
- Provides assistance within the scope of this level to other employees.

Schedule B – Training wage arrangements

Schedule C—Supported wage system