

SOUTH AUSTRALIAN EMPLOYMENT TRIBUNAL

STATE WAGE CASE 2020 (No 2)

JURISDICTION: South Australian Employment Tribunal – *Fair Work Act 1994* – Section 69 Minimum Standard for Remuneration – Section 100 adoption of principles affecting the determination of remuneration and working conditions

CASE NO: ET-20-02818

HEARING DATE: Written submissions received up to 11 February 2021

JUDGMENT OF: The Honourable President Justice Dolphin
Her Honour Deputy President Judge Kelly
His Honour Auxiliary Judge Hannon

DELIVERED ON: 12 February 2021

CATCHWORDS:

Declarations and orders pursuant to ss 69(3) and 100 of the Fair Work Act 1994 (SA) – Parties in disagreement as to whether s 90 can be used to adjust ‘work-related allowances’ in Awards – Further submissions to be received.

Fair Work Act 1994 (SA) ss 69(3), 90 and 100

State Wage Case 2020 [2020] SAET 186

Treasurer for the State of South Australia and Anor v United Trades and Labour Council (Trading as SA Unions) [2020] SASFC 42

Annual Wage Review 2019-20 [2020] FWCFB 3500

SUBMISSIONS FROM:

The Treasurer of South Australia
Chief Executive, Department of Treasury and Finance
United Trades and Labor Council of South Australia (SA Unions)
Local Government Association of South Australia

- 1 After the publication of our reasons in *State Wage Case 2020*,¹ the parties were invited to consider, and encouraged to reach agreement on, the necessary declarations and orders to be made.
- 2 In light of the judgment of the Full Court of the Supreme Court of South Australia in *Treasurer for the State of South Australia and Anor v United Trades and Labour Council (Trading as SA Unions)*² it was submitted that for certain allowances in state Awards to be increased by the 1.75% – as determined in the *State Wage Case 2020* judgment – that s 90 of the *Fair Work Act 1994 (SA)* (FW Act) would need to be operable.
- 3 Section 90 had not been the focus of the proceedings which led to the *State Wage Case 2020* judgment, nor previous recent similar annual decisions.
- 4 Section 90 provides the South Australian Employment Tribunal (SAET) with power to make Awards about remuneration and other industrial matters. Before making any such Award – or indeed any adjustments to any Award – SAET must take all reasonable steps to ensure that all persons who are to be bound by the Award have been given a reasonable opportunity to appear to be heard: s 90(7).
- 5 The usual way that SAET, and its predecessors, have affected those ‘reasonable steps’ has been to publish a notice in *The Advertiser*. The parties agreed with this approach.
- 6 The relevant notice appeared in *The Advertiser* on 30 November 2020.³ The notice also appeared on SAET’s website.⁴ Any interested person who desired to be heard was invited to notify the President’s chambers by 5.00pm on 16 December 2020. Aside from the present parties, which had already notified of their desire to be heard, no other notifications were received.
- 7 The parties were therefore invited to provide an agreed position, if that could be arrived at,⁵ by 21 December 2021. No agreed position was received.
- 8 At a hearing on 5 February 2021, the parties advised that they were in disagreement with regards to ‘work related allowances’ and the operation of s 90 of the FW Act. Orders were made that will see written submissions filed and served on those issues, to be heard and determined at a later stage.⁶

¹ [2020] SAET 186 – 25 September 2020.

² [2020] SASCFC 42.

³ *The Advertiser* Monday 30 November 2020 p 6.

⁴ <https://www.saet.sa.gov.au/resources/current-notices/>.

⁵ As it had in recent previous annual decisions.

⁶ Also the issue as to recreational long service leave remains in issue between the parties, this will also be the subject of a separate hearing and judgment.

- 9 Save for those issues still in dispute, the parties have advised that they are in agreement with regards to most of the declarations and orders to be made to give effect to our reasons in *State Wage Case 2020*. Accordingly, with the consent of the parties, we declare and order as follows:

**Declarations and orders pursuant to s 100 of the
*Fair Work Act 1994 (SA)***

Declaration

- A. The South Australian Employment Tribunal (SAET) declares pursuant to s 100 of the Fair Work Act 1994 (FW Act) that it adopts with modifications the decision of the Minimum Wage Panel of the Fair Work Commission in the Annual Wage Review 2019-2020 [2020] FWCFB 3500, in the form set out hereunder.
- B. SAET makes this Declaration pursuant to s 100(3)(c) of the FW Act on the basis that it applies to specified Awards. The Awards are set out in Schedule A, appended hereto.
- C. This Declaration will come into force on the first pay period to commence on or after 1 July 2020 and remain in force until further order of SAET.
- D. The Registrar will settle the variations to each of the Awards in Schedule A in accordance with s 98 of the FW Act.

Orders

- 1. **THAT** existing adult Award wages are to be increased by 1.75% provided that where any such rate, once increased, is less than the State Minimum Award Wage, as varied in accordance with paragraph 6 below, such rate will be varied to reflect this rate (\$767.50 per week).
- 2. **THAT** proportionate adjustments are to apply to juniors, trainees and other employees as set out in the relevant Award, subject to the result being no less favourable than the relevant rates in the Declaration of the Minimum Standard for Remuneration.
- 3. **THAT** in the case of piecework or session rates, the increase consequent upon this order shall be calculated in accordance with the provisions of the relevant Award, or where the Award is silent on the method of adjustment, such rates will be increased by 1.75%.
- 4. **THAT** the following terms be included in each Award:

“The rates of pay in this Award include the safety net adjustment payable under the *2020 State Wage Case* and Minimum Standard for Remuneration. This safety net adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this Award which are above the wage rates prescribed in the Award. Such above Award payments include wages payable pursuant to enterprise agreements, currently operating enterprise flexibility agreements, Award variations to give effect to enterprise agreements and over Award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under the existing or previous State Wage Case principles, previous General Reviews of Award Wages and the *2020 State Wage Case* and Minimum Standard for Remuneration excepting those resulting from enterprise agreements or Award variations to give effect to enterprise agreements, are not to be used to offset safety net adjustments.”

5. **THAT** where an Award has not received all increases under previous State Wage Cases or General Award Wages Review decisions, and no phase in arrangements for such increases are contained in the Award, the particular increases outstanding will be recorded in an additional paragraph as follows:

“The rates of pay in this Award do not include adjustments payable under the following decisions:

(list decisions)”.

6. **THAT** the State Minimum Award Wage be increased to \$767.50 per week.
7. **THAT** the minimum amount payable under the supported wage provisions in those Awards that contain the supported wage provisions model clause be increased to \$91.10 per week.
8. **THAT** the following terms be included in each Award:

“Any employer or group of employers bound by an Award may apply to, temporarily or otherwise, reduce, postpone and/or phase in the application of any increase in labour costs flowing from the *2020 State Wage Case* and Minimum Standard for Remuneration on the grounds of serious economic adversity. The merit of such application will be determined in the light of the particular circumstances of each case and the impact on employment at the enterprise level of

the increase in labour costs is a significant factor to be taken into account in assessing the merit of any application. A party may make such an application under s 31A of the *South Australian Employment Tribunal Act 2014* (SAET Act) in the form approved under rule 34 of the *South Australian Employment Tribunal Rules 2017*. It will then be a matter for the President to decide whether it should be dealt with by a Full Bench of SAET.

Any decision to temporarily postpone or reduce an increase will be subject to a further review, the date of which will be determined by SAET at the time it decides any application under this provision.

An individual employer making an application pursuant to this provision may make a request under s 55(2) of the SAET Act that the hearing of the matter be conducted in private and/or that some or all of the evidentiary material produced in the case not be available for inspection. Any such request will be determined by SAET in the circumstances of each case.”

9. **THAT** the Awards in Schedule A, below, be varied from the first pay period commencing on or after 1 July 2020. Liberty is granted to apply for a different operative date in an Award where phased-in increases apply, based upon its particular circumstances.
10. **THAT** the Registrar will settle the variations to each of the Awards in accordance with s 98 of the FW Act. Where there is a dispute as to the import of the variation order in a particular Award the Registrar may refer the Award(s) concerned to a Member of SAET for determination.

SCHEDULE A

NAME OF AWARD
Aboriginal Education Workers (DECS) Award (PS)
Adelaide Cemeteries Authority Officers Award (PS)
Adelaide City Corporation Award (LG)
Caretakers and Cleaners Award (LG)
Cemetery Employees (SA Authorities) Award (LG)
Central Linen Employees Award (PS)
Chauffeurs (Ministerial) Public Service Award (PS)
Clothing Trades Award
Early Childhood Workers Award (PS)
Firefighting Industry Employees (South Australian Metropolitan Fire Service) Award 2007 (PS)
Government Stores Employees Interim Award (PS)
Health Recreation and Fitness Award (LG)
Hotels – Adelaide Entertainments Corporation and Staff employed under the Parliament (Joint Services) Act 1985 Award (PS)
Intellectual Disability Services Award (PS)
Live Theatre and Concert (Adelaide Festival Centre Trust) Award (PS)
Local Government Cafes, Restaurants and Snack Bars Award (LG)
Local Government Employees Award (LG)
Local Government (Health Services) Award (LG)
Medical Scientists (South Australian Public Sector) Award (PS)
Municipal Employees (Adelaide City Council) Award, 2012 (LG)
Nurses (South Australian Local Government Sector) Award (LG)
Nurses (South Australian Public Sector) Award 2002 (PS)
Part-Time Interpreters or Translators (Public Service) (SA) Award (PS)
Performing Arts Centre (Adelaide Festival Centre Trust) Award (PS)
Personal Assistants to Members of the Parliament of South Australia 1989 (PS)
Police Officers Award (PS)

NAME OF AWARD
Pre-School (Kindergarten) Teaching Staff Award (PS)
ReturnToWork SA Award 2015 (PS)
SA Ambulance Service Award (PS)
SA Public Sector and Local Government Entities Clerks Award (PS & LG)
SA Public Sector Cafes and Restaurants Adelaide Convention Centre Award (PS)
SA Public Sector Clerks Adelaide Entertainments Corporation Award (PS)
S.A. Public Sector Live Performance Award (PS)
S.A. Public Sector Plumbers and Gasfitters Award (PS)
S.A. Public Sector Salaried Employees Interim Award (PS)
School Services Officers (Government Schools) Award (PS)
South Australian Government Building Trades Award (PS)
South Australian Government Civil Construction And Maintenance Award (PS)
South Australian Government Departments and Instrumentalities (Metal Trades) Award 2007 (PS)
South Australian Government Health Etc. Ancillary Employees Award (PS)
South Australian Government Printing Interim Award (PS)
South Australian Government Services Award (PS)
South Australian Government Transport Workers Award 1994 (PS)
South Australian Medical Officers Award (PS)
South Australian Municipal Salaried Officers Award (LG)
TAFE (Educational Staff) Interim Award (PS)
Teachers (DECS) Award (PS)

Declaration of the Minimum Standard for Remuneration pursuant to s 69(3) of the *Fair Work Act 1994* (SA)

In accordance with the decision in the 2020 State Wage Case decision and Review of the Minimum Standard for Remuneration (MSR), the South Australian Employment Tribunal (SAET) hereby declares as follows:

1. Scope of the standard

- 1.1 This standard is made pursuant to s 69(3) of the *Fair Work Act 1994* (FW Act).
- 1.2 Subject to 1.3 herein, this standard applies to all employers and **employees** who are subject to the terms of the **FW Act** and will prevail over contracts of employment and existing Award conditions to the extent that the terms of this standard are more favourable to an **employee**.
- 1.3 This standard will not apply to persons covered by any Awards that are subsequently excluded by SAET pursuant to s 72A(6) of the **FW Act** to the extent of such exclusion.

2. Definitions

For the purposes of this standard:

Adult means an **employee** who is of or above 21 years of age.

Apprentice means an **employee** who is engaged under a contract of training in a trade pursuant to the *Training and Skills Development Act 2008*.

Casual means an **employee** who is engaged and paid as a **casual**.

Employee means a person who is engaged under a contract of employment recognised at common law under which a person is employed for remuneration in an Industry within the meaning of s 4 of the **FW Act**.

FW Act means the *Fair Work Act 1994*.

Junior means an **employee** who is less than 21 years of age.

Ordinary weekly hours means a maximum of 38 hours per week (which may be averaged over four consecutive weeks) and **ordinary hours** has a corresponding meaning.

SAET means the South Australian Employment Tribunal.

SAET Act means the *South Australian Employment Tribunal Act 2014*.

Trainee has the meaning set out in Schedule B herein.

Weekly hired employee means an **employee** other than a **casual employee**.

3. The minimum wage for adult employees

Subject to the other terms of this standard:

- 3.1 The minimum weekly wage for an *adult employee* working *ordinary hours* is \$767.50.*
- 3.2 A *weekly hired adult employee* working less than 38 hours per week is to be paid a minimum hourly rate of \$20.20 for each hour.
- 3.3 Hours worked by a *weekly hired adult employee* in excess of the *ordinary hours* as defined are to be paid at a minimum hourly rate of \$20.20 for each such hour.
- 3.4 *Adult casual employees* are to be paid a minimum hourly rate of \$25.24 for each hour.

4. The minimum wage for junior employees

Subject to other terms of this standard, *junior employees* are to be paid a minimum rate of pay based upon the relevant *adult* rate of pay (*weekly*, part-time or *casual*) and applying the following gradations according to the age of the *employee*:

		<i>Weekly*</i>	<i>Hourly*</i>	<i>Casual hourly*</i>
		\$	\$	\$
Under 17 years of age	50%	383.80	10.10	12.62
17 years of age	60%	460.50	12.12	15.15
18 years of age	70%	537.30	14.14	17.67
19 years of age	80%	614	16.16	20.20
20 years of age	90%	690.80	18.18	22.72

5. Supported wage

Employees who meet the eligibility criteria for a supported wage as set out in Schedule A are to be paid a minimum wage as set out in that Schedule according to their assessed capacity.

6. Apprentices and Trainees

Employees who are subject to formal contracts of training pursuant to the *Training and Skills Development Act 2008* are to be paid the relevant minimum wage as set out in Schedule B.

* These rates include an increase of 1.75% in accordance with the 2020 State Wage Case decision and Review of MSR.

7. Piece-work arrangements

- 7.1 An *employee* may be remunerated under any system of payment by results provided that any such *employee* shall while so working receive a minimum amount for each week equal to the appropriate wage otherwise established by this standard.
- 7.2 Where such *employee* does not work a full week under a system of payment by results, he or she shall receive a weekly minimum amount proportionate to the time worked under such system.
- 7.3 For the purposes of this clause, the hours worked and the payments to be made may be averaged over a period of four consecutive weeks or the period over which the *employee* is regularly engaged by the employer, whichever is the lesser.

8. Other incidental and related provisions

All wage, salary, commission or bonus payments (however described) made to or for the direct benefit of an *employee* by an employer may be taken into account for the purposes of satisfying this minimum standard.

9. Exclusions of Awards

In accordance with s 72A(5) of the *FW Act* a party to an Award may, within 28 days after the making of this standard, apply to SAET to have the Award excluded from the ambit of the standard (or a part of the standard).

10. Date of effect and review

- 10.1 This standard will come into force on and from the first full pay period commencing on or after 1 July 2020 and will remain in force subject to review by SAET.
- 10.2 This standard is to be reviewed at least once in every year and it is the intention of SAET that it be reviewed at the time of any general review of Award wages as undertaken by SAET and may in any event be reviewed upon application made by a peak entity or upon SAET's own motion.

SCHEDULE A: SUPPORTED EMPLOYMENT PROVISIONS

SA.1 Definitions

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 Declaration. In the context of this Schedule, the following definitions will apply:

- SA.1.1 *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 “Supported Wage System: Guidelines and Assessment Process”.
- SA.1.2 *Accredited 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*.
- SA.1.3 *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.
- SA.1.4 *Assessment instrument* means the form 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*.

SA.2 Eligibility Criteria

Employees covered by this Schedule will be those who are unable to perform the range of duties because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a *Disability Support Pension*.

This Schedule does not apply to any existing *employee* who has a claim against the employer which is subject to the provisions of the relevant workers’ compensation legislation relating to the rehabilitation of *employees* who are injured in the course of their current employment.

This Schedule does not apply to employers in respect of their facility, programme, undertaking, *service* or the like which receives funding under the *Disability Services Act 1986* and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a *Disability Support Pension* in accordance with the requirements of the *Disability Service Act 1986* and the Standards contained therein, as amended from time to time.

SA.3 Supported Wage Rates

Employees to whom this Schedule applies must be paid the applicable percentage of the minimum rate of pay prescribed by this Declaration according to the following table:

<i>Assessed Capacity</i>	<i>% of prescribed minimum rates</i>
10%*	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

(provided that the minimum amount payable must be not less than \$91.10 per week).

* Where a person's assessed capacity is 10% they must receive a high degree of assistance and support.

SA.4 Assessment of Capacity

For the purpose of establishing the percentage of the wage rate to be paid to an *employee* under this Schedule, the productive capacity of the *employee* will be assessed in accordance with the *Supported Wage System* and documented in an *assessment instrument* by the employer and an *accredited Assessor* acceptable to the *employee* and the *employee's* advisers and to the employer.

SA.5 Lodgement of Assessment Instrument

SA.5.1 All *assessment instruments* under the conditions of this Schedule, including the appropriate percentage of the wage to be paid to the *employee*, must be lodged by the employer with the Registrar of SAET.

SA.5.2 *Assessment instruments* must be agreed and signed by the parties to the assessment, and must be referred by the Registrar to an inspector appointed under s 219A of the *FW Act* and will take effect unless an objection is notified to the Registrar within ten working days.

SA.6 Review of Assessment

The assessment of the applicable percentage should be subject to annual review or earlier 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*.

SA.7 Other Terms and Conditions of Employment

Where an assessment has been made, the applicable percentage will apply to the wage rate only. *Employees* covered by the provisions of this Schedule will be entitled to the same terms and conditions of employment as otherwise specified by the *FW Act*.

SA.8 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.

SA.9 Trial Period

- SA.9.1 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 twelve weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- SA.9.2 During the trial period the assessment of capacity must be undertaken and the proposed wage rate for a continuing employment relationship must be determined.
- SA.9.3 The minimum amount payable to the *employee* during the trial period must be not less than \$91.10 per week.
- SA.9.4 Work trials should include induction or training as appropriate to the job being trialled.
- SA.9.5 Where the employer and *employee* wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment must be entered into based on the outcome of assessment under SA.4 hereof.

SCHEDULE B: APPRENTICE AND TRAINEE RATES

SB.1 APPRENTICES

SB.1.1 Subject to the exemptions set out in SB.1.2 an *apprentice* is entitled to a minimum wage based upon the following percentage of the *adult* weekly minimum wage specified in this standard:

		<i>Per Week</i>
		\$
First Year	42%	322.30
Second Year	55%	422.10
Third Year	75%	575.60
Fourth Year	88%	675.40

providing that an *adult apprentice* must receive at least the *adult* minimum wage as specified in this standard.

SB.1.2 Exemptions granted in nominated Awards in relation to adult apprentice wage rates are set out in **Appendix A**.

SB.2 TRAINEES

SB.2.1 Application

SB.2.1.1 This part of the Schedule shall apply to persons who are undertaking a *Traineeship* (as defined).

SB.2.1.2 This part of the Schedule does not apply to an *apprentice*.

SB.2.2 Definitions

SB.2.2.1 *Approved Training* means that training which is specified in the *Training Plan*, which is part of the *Training Agreement*, which is registered with the *T&SC*. It includes training undertaken both on and off-the-job in a *Traineeship* and involves formal instruction, both theoretical and practical, and supervised practice. The training reflects the requirements of a national *Training Package* or a *Traineeship Scheme* and leads to a qualification under the Australian Qualification Framework.

SB.2.2.2 *T&SC* means the Training and Skills Commission under the *Training Act*.

SB.2.2.3 *Trainee* is an individual who is a signatory to a *Training Agreement* registered with the *T&SC* and is involved in paid work and structured training, which may be on or off-the-job. *Trainee* does not include an individual who already has the competencies to which the *Traineeship* is directed.

SB.2.2.4 *Traineeship* means a system of training which has been approved by the *T&SC*, which meets the requirements of a National *Training Package* developed by a National Industry Training Advisory Board and endorsed by the National Training Quality Council, which leads to an Australian Qualifications Framework qualification specified by that National *Training*

Package, and includes full-time *Traineeships* and part-time *Traineeships* including school-based *Traineeships*.

SB.2.2.5 **Traineeship Scheme** means an approved *Traineeship* applicable to a group or class of employees or to an industry or sector of an industry or an enterprise, which has been approved by the **T&SC**.

SB.2.2.6 **Training Act** means the *Training and Skills Development Act 2008* or any successor legislation.

SB.2.2.7 **Training Agreement** means a Contract of Training for a *Traineeship* made between the employer and a *Trainee*, which is registered with the **T&SC**.

SB.2.3 Minimum Wages for Trainees

SB.2.3.1 The minimum wage payable to a *Trainee* under the terms of this standard will be as specified in Appendix A.

APPENDIX A

TRAINEESHIP RATES

CLAUSE A. - WAGES

A.B.1 Full time Trainees

A.B.1.1 The weekly wage payable to full-time *Trainees* shall be provided in A.B.1.4, A.B.1.5, and A.B.1.6 of this Appendix.

A.B.1.2 These wage rates will only apply to *Trainees* while they are undertaking an *Approved Traineeship*, which includes *Approved Training*.

A.B.1.3 The wage rates prescribed by this clause do not apply to complete trade level training, which is covered by the Apprenticeship system.

A.B.1.4 Wage Level A

Where the *Accredited Training* course and work performed are for the purpose of generating skills, which have been defined for work at Wage Level A:

	<i>Highest year of schooling completed</i>		
	<i>Year 10</i>	<i>Year 11</i>	<i>Year 12</i>
	\$	\$	\$
School Leaver	272.00 (50%)*	339.00 (33%)	
	315.00 (33%)	380.00 (25%)	
	346.00	380.00	456.00
Plus 1 year <i>out of school</i>	380.00	456.00	527.00
Plus 2 years <i>out of school</i>	456.00	527.00	616.00
Plus 3 years <i>out of school</i>	527.00	616.00	704.00
Plus 4 years <i>out of school</i>	616.00	704.00	
Plus 5 or more years	704.00		

A.B.1.5 Wage Level B

Where the *Accredited Training* course and work performed are for the purpose of generating skills, which have been defined for work at Wage Level B:

	<i>Highest year of schooling completed</i>		
	<i>Year 10</i>	<i>Year 11</i>	<i>Year 12</i>
	\$	\$	\$
School Leaver	272.00 (50%)*	339.00 (33%)	
	315.00 (33%)	380.00 (25%)	
	346.00	380.00	440.00
Plus 1 year <i>out of school</i>	380.00	440.00	508.00
Plus 2 years <i>out of school</i>	440.00	508.00	593.00
Plus 3 years <i>out of school</i>	508.00	593.00	677.00
Plus 4 years <i>out of school</i>	593.00	677.00	
Plus 5 or more years	677.00		

A.B.1.6 Wage Level C

Where the *Accredited Training* course and work performed are for the purpose of generating skills, which have been defined for work at Wage Level C.

	<i>Highest year of schooling completed</i>		
	<i>Year 10</i>	<i>Year 11</i>	<i>Year 12</i>
	\$	\$	\$
School Leaver	272.00 (50%)*	339.00 (33%)	
	315.00 (33%)	380.00 (25%)	
	346.00	380.00	440.00
Plus 1 year <i>out of school</i>	380.00	440.00	496.00
Plus 2 years <i>out of school</i>	440.00	496.00	555.00
Plus 3 years <i>out of school</i>	496.00	555.00	618.00
Plus 4 years <i>out of school</i>	555.00	618.00	
Plus 5 or more years	618.00		

A.B.1.7 School Based Traineeships

	<i>Year of Schooling</i>	
	<i>Year 11</i>	<i>Year 12</i>
	\$	\$
School based <i>Traineeships</i> in Wage Levels A, B and C	346.00	380.00

*Figures in brackets indicate the average proportion of time spent in *Approved Training* to which the associated wage rate is applicable. Where not specifically indicated, the average proportion of time spent in structured training, which has been taken into account in setting the rate, is 20%.

A.B.1.8 Wage rates for Certificate IV Traineeships

A.B.1.8.1 *Trainees* undertaking an AQF IV *Traineeship* shall receive the relevant weekly wage rate for AQF III *Trainees* at Wage Levels A, B or C as applicable with the addition of 1.75% of that wage rate.

A.B.1.8.2 An *Adult Trainee* who is undertaking a *Traineeship* for an AQF IV qualification shall receive the following weekly wage as applicable based on the allocation of AQF III qualifications:

<i>Wage Level</i>	<i>First year of Traineeship</i>	<i>Second year of Traineeship</i>
Wage Level A	\$732.00	\$760.00
Wage Level B	\$703.00	\$731.00
Wage Level C	\$641.00	\$664.00

A.B.1.8.3 Where a person was employed by the employer immediately prior to becoming an *Adult Trainee* with the employer, such person shall not suffer a reduction in the rate of pay by virtue of becoming a *Trainee*.

Casual loadings will be disregarded when determining whether a person has suffered a reduction in the rate of pay.

- A.B.1.8.4 Where a *Traineeship* is converted from an AQF II to an AQF III *Traineeship*, or from an AQF III to an AQF IV *Traineeship*, the *Trainee* shall move to the next higher rate provided in this Appendix, if a higher rate is provided for that new AQF level.
- A.B.1.9 Section A sets out the Wage Level of a *Traineeship*.
- A.B.1.10 For the purposes of this provision, *out of school* shall refer only to periods out of school beyond *Year 10*, and shall be deemed to:
- A.B.1.10.1 Include any period of schooling beyond *Year 10*, which was not part of nor contributed to a completed year of schooling;
- A.B.1.10.2 Include any period during which a *Trainee* repeats in whole or part of a year of schooling beyond *Year 10*;
- A.B.1.10.3 Not include any period during a calendar year in which a year of schooling is completed; and
- A.B.1.10.4 Have effect on an anniversary date being January 1 in each year.
- A.B.1.11 Despite any other clause in this Schedule, *Trainees* may not be employed under this Schedule under the *Traineeship Schemes* and in the areas of employment listed in Section A.

A.B.2 Part Time Trainees

- A.B.2.1 The tables set out below are the hourly rates of pay where the training is either fully off-the-job or where 20% of time is spent in *Approved Training*. These rates are derived from a 38 hour week.

Table 1: Trainees who have left school (\$ per hour)

Wage Level A	<i>Highest year of schooling completed</i>		
	<i>Year 10</i>	<i>Year 11</i>	<i>Year 12</i>
	\$	\$	\$
School Leaver	11.39	12.48	14.99
Plus 1 year <i>out of school</i>	12.48	14.99	17.35
Plus 2 years <i>out of school</i>	14.99	17.35	20.23
Plus 3 years <i>out of school</i>	17.35	20.23	23.16
Plus 4 years <i>out of school</i>	20.23	23.16	
Plus 5 or more years	23.16		

Wage Level B

	<i>Year 10</i>	<i>Year 11</i>	<i>Year 12</i>
	\$	\$	\$
School Leaver	11.39	12.48	14.45
Plus 1 year <i>out of school</i>	12.48	14.45	16.70
Plus 2 years <i>out of school</i>	14.45	16.70	19.52
Plus 3 years <i>out of school</i>	16.70	19.52	22.27
Plus 4 years <i>out of school</i>	19.52	22.27	
Plus 5 or more years	22.27		

Wage Level C

	<i>Year 10</i>	<i>Year 11</i>	<i>Year 12</i>
	\$	\$	\$
School Leaver	11.39	12.48	14.45
Plus 1 year <i>out of school</i>	12.48	14.45	16.31
Plus 2 years <i>out of school</i>	14.45	16.31	18.23
Plus 3 years <i>out of school</i>	16.31	18.23	20.31
Plus 4 years <i>out of school</i>	18.23	20.31	
Plus 5 or more years	20.31		

Table 2: School based Traineeships (\$ per hour)

	<i>Year of schooling</i>	
	<i>Year 11</i>	<i>Year 12</i>
	\$	\$
Wage Levels A, B and C	11.39	12.48
20% loading*	13.67	14.98

**Where agreement exists with the trainee, an additional 20% loading may be paid on all ordinary hours in lieu of annual leave, personal leave and public holidays.*

Table 3: Wage rates for part-time Certificate IV Traineeships (\$ per hour):

Trainees undertaking a part-time AQF IV *traineeship* shall receive the relevant hourly rate for AQF III trainees at Wage Levels A, B or C as applicable under Table 1 or 2 with the addition of 3.0% of that wage rate.

An adult *trainee* (as defined) who is undertaking a part-time *traineeship* for an AQF IV qualification shall receive the following hourly rate as applicable based on the allocation of AQF III qualifications:

<i>Wage Level</i>	<i>First year of traineeship</i>	<i>Second year of traineeship</i>
Wage level A	\$24.05	\$24.96
Wage level B	\$23.13	\$24.00
Wage level C	\$21.08	\$21.90

A.B.2.2 The hours for which payment shall be made are determined as follows:

A.B.2.2.1 Where the *Approved Training* for a *Traineeship* (including a school based *Traineeship*) is provided off-the-job by a registered training organisation, for example at school or at TAFE, these rates shall apply only to the total hours worked by the part-time *Trainee* on-the-job.

A.B.2.2.2 Where the *Approved Training* is undertaken solely on-the-job and the average proportion of time to be spent in *Approved Training* is 20 % (ie the same as for the equivalent full-time *Traineeship*), then the total hours on-the-job shall be multiplied by the applicable hourly rate, and then 20% shall be deducted.

A.B.2.2.3 Where the *Approved Training* is partly on-the-job and partly off-the-job and the average proportion of time to be spent in *Approved Training* is 20% (ie the same as for the equivalent full-time *Traineeship*), then the total of all hours spent in work and training shall be multiplied by the applicable hourly rate, and then 20 % shall be deducted.

Note: As noted in clause A.B.1.7, 20% is the average proportion of time spent in *Approved Training*, which has been taken into account in setting the wage rates for most full-time *Traineeships*.

A.B.2.2.4 Where a person was employed part-time by an employer under this Award immediately prior to becoming a part-time adult *trainee* with that employer, such person shall not suffer a reduction in the hourly rate of pay by virtue of becoming a *trainee*.

A.B.2.2.5 Where the normal full-time weekly hours are not 38 the appropriate hourly rate may be obtained by multiplying the rate in the table by 38 and then dividing by the normal full-time hours.

A.B.2.3 **General Formula**

A.B.2.3.1 For *Traineeships* not covered by A.B.2.1, the following formula for calculation of wage rates shall apply:

The wage rate shall be pro-rata the full-time rates based on variation in the amount of training and/or the amount of work over the period of the *Traineeship*, which may also be varied on the basis of the following formula:

$$\text{Full-time wage rate} \times \frac{\text{Trainee hours} - \text{average weekly training time}}{30.4^*}$$

***Note:** 30.4 in the above formula represents 38 ordinary full-time hours less the average training time for full-time *Trainees* (i.e. 20%).

(a) *Full-time wage rate* means the appropriate rate as set out in A.B.1.4, A.B.1.5, A.B.1.6 and A.B.1.7 of this Schedule.

- (b) *Trainee hours* shall be the hours worked per week including the time spent in *Approved Training*.
- (c) *Average weekly training time* is based upon the length of the *Traineeship* specified in the *Traineeship Agreement* or *Training Agreement* as follows:

$$\frac{7.6 \times 12}{\text{Length of the } \textit{traineeship} \text{ in months}}$$

Note 1: **7.6 in the above formula represents the average weekly training time for a full-time Trainee whose ordinary hours are 38 per week.**

Note 2: The parties note that the *Training Agreement* will require a *Trainee* to be employed for sufficient hours to complete all requirements of the *Traineeship*, including the on-the-job work experience and demonstration of competencies. The parties also note that this would result in the equivalent of a full day's on-the-job work per week.

A.B.2.3.2 Example of the calculation for the wage rate for a part-time traineeship

A school student commences a *Traineeship* in year 11. The ordinary hours of work are 38. The *Training Agreement* specifies two years (24 months) as the length of the *Traineeship*.

Average weekly training time is therefore $7.6 \times 12/24 = 3.8$ hours.

Trainee hours totals 15 hours; these are made up of 11 hours' work which is worked over two days of the week plus 1.5 hours on-the-job training plus 2.5 hours off-the-job *Approved Training* at school and at TAFE.

So the wage rate in year 11 is:

$$\frac{\$346 \times 15 - 3.8}{30.4} = \$127.47$$

The wage rate varies when the student completes year 11 and passes the anniversary date of 1 January the following year to begin year 12 and/or if *trainee hours* changes.

SECTION A

Allocation of Traineeships to Wage Levels

Wage Level A

<i>Training Package</i>	<i>Certificate Level</i>
Administration	I II III
Assessment and Workplace Training	III
Beauty (National)	III
Black Coal	II III
Business Services	I II III
Chemical, Hydrocarbons and Oil Refining	III
Civil Construction	III
Community Services	II III
Correctional Services	III
Financial Services	III
Floristry	III
Food Processing Industry	III
Forest & Forest Products	III
Gas Industries (Utilities)	III
Hospitality Industry	III
Information Technology	II III
Laboratory Operations	III
Local Government (Environmental Health & Regulation)	II III
Local Government (General Construction)	III
Local Government (Governance & Administration)	I II III
Local Government (Government)	II III
Manufactured Mineral Products	III
Metal and Engineering Industry	
- Engineering Production Certificate	III
- Technical Traineeship	III

<i>Training Package</i>	<i>Certificate Level</i>
Museum and Library/Information Services	II
	III
National Public Services	II
	III
Plastics, Rubber and Cable-making	III
Public Services	II
	III
Retail	III
Telecommunications	II
	III
Textiles, Clothing and Footwear	III
Tourism	I
	II
	III
Transport and Distribution	III
Water Industries (Utilities)	III
Wholesale Training	III

Wage Level B

<i>Training Package</i>	<i>Certificate Level</i>
Aeroskills Industry	II
Asset Maintenance	II
	III
Asset Security	I
	II
	III
Australian Meat Industry	I
	II
	III
Automotive Industry Manufacturing Film, TV, Radio and Multimedia	II
	III
Automotive Industry Retail Service and Repair	II
Beauty (National)	II
Caravan Industry	I
	III
	III
Civil Construction	I
	II
Entertainment Industry	I
	II
	III

<i>Training Package</i>	<i>Certificate Level</i>
Extractive Industry	II
	III
Floristry	II
Food Processing Industry	I
	II
Forest and Forest Products Industry	I
	II
Gas Industry (Utilities)	II
Hospitality Industry	I
	II
Local Government (General Construction)	I
	II
Manufactured Mineral Products	I
	II
Metal and Engineering Industry	I
	II
National Community Recreation Industry	II
	III
National Fitness Industry	II
	III
National Outdoor Recreation Industry	II
	III
National Sport Industry	I
	II
	III
Plastics, Rubber and Cablemaking	I
	II
Public Safety	II
Printing and Graphic Arts	II
Pulp & Paper Manufacturing Industries	I
	II
Retail	II
Textile, Clothing and Footwear	I
	II
Transport and Distribution	I
	II
Veterinary Nursing	I
	II
	III
Water Industry (Utilities)	II
Wholesale Training	II

Wage Level C

Training Package

Agriculture

Horticulture

Music

Racing Industry

Seafood Industry

Certificate Level

I

II

III

I

II

III

I

II

III

II

III

I

II

III