

Gardening and Landscaping Services Award 2010

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

Table of Contents

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

Gardening and Landscaping Services Award 2010

Part 6—Leave and Public Holidays	20
24. Annual leave	20
25. Personal/carer’s leave and compassionate leave	21
26. Community service leave.....	21
27. Public holidays.....	21
Schedule A—Transitional Provisions	22
Schedule B—Classification Structure	27
Schedule C—Supported Wage System	30
Schedule D—School-based Apprentices	33
Schedule E—National Training Wage	34
Appendix E1: Allocation of Traineeships to Wage Levels	41

Part 1—Application and Operation

1. Title

This award is the *Gardening and Landscaping Services Award 2010*.

2. Commencement and transitional

2.1 This award commences on 1 January 2010.

2.2 The monetary obligations imposed on employers by this award may be absorbed into overaward payments. Nothing in this award requires an employer to maintain or increase any overaward payment.

2.3 This award contains transitional arrangements which specify when particular parts of the award come into effect. Some of the transitional arrangements are in clauses in the main part of the award. There are also transitional arrangements in Schedule A. The arrangements in Schedule A deal with:

- minimum wages and piecework rates
- casual or part-time loadings
- Saturday, Sunday, public holiday, evening or other penalties
- shift allowances/penalties.

2.4 Neither the making of this award nor the operation of any transitional arrangements is intended to result in a reduction in the take-home pay of employees covered by the award. On application by or on behalf of an employee who suffers a reduction in take-home pay as a result of the making of this award or the operation of any transitional arrangements, Fair Work Australia may make any order it considers appropriate to remedy the situation.

2.5 Fair Work Australia may review the transitional arrangements in this award and make a determination varying the award.

2.6 Fair Work Australia may review the transitional arrangements:

- (a) on its own initiative; or
- (b) on application by an employer, employee, organisation or outworker entity covered by the modern award; or
- (c) on application by an organisation that is entitled to represent the industrial interests of one or more employers or employees that are covered by the modern award; or
- (d) in relation to outworker arrangements, on application by an organisation that is entitled to represent the industrial interests of one or more outworkers to whom the arrangements relate.

3. Definitions and interpretation

3.1 In this award, unless the contrary intention appears:

Act means the *Fair Work Act 2009* (Cth)

agreement-based transitional instrument has the meaning in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

award-based transitional instrument has the meaning in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

employee means a national system employee as defined in sections [13](#) and [30C](#) of the Act

employer means a national system employer as defined in sections [14](#) and [30D](#) of the Act

enterprise award-based instrument has the meaning in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

leading hand means an employee who is required to supervise, direct or be in charge of another employee or employees

NES means the National Employment Standards as contained in [sections 59 to 131](#) of the *Fair Work Act 2009* (Cth)

on-hire means the on-hire of an employee by their employer to a client, where such employee works under the general guidance and instruction of the client or a representative of the client

standard rate means the minimum weekly wage for a Level 4 employee in clause 14—Minimum wages. This rate is to be used for the purposes of calculating various allowances that require a designated standard rate

transitional minimum wage instrument has the meaning in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

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 gardening and landscaping services industry and their employees in the classifications listed in Schedule B—Classification Structure to the exclusion of any other modern award.

4.2 **Gardening and landscaping services industry** means:

- (a) the design, preparation and installation of pavements, landscape features, and/or associated lawns and gardens in parklands, public domain and recreation areas;
- (b) maintenance or horticultural establishment work following practical completion of work;

Gardening and Landscaping Services Award 2010

- (c) the laying-out, construction, cultivation or keeping in order of gardens in connection with private houses;
- (d) landscape and environmental rehabilitation and restoration works on private or public lands; or
- (e) the preparation and maintenance of gardens and grounds including related turf and renovation works in sports fields.

4.3 The award does not cover employers or employees covered by the following awards:

- (a) *Aged Care Award 2010*;
- (b) *Amusement, Events and Recreation Award 2010*;
- (c) *Building and Construction General On-site Award 2010*;
- (d) *Cemetery Industry Award 2010*;
- (e) *Educational Services (Schools) General Staff Award 2010*;
- (f) *Health Professionals and Support Services Award 2010*;
- (g) *Local Government Industry Award 2010*
- (h) *Racing Industry Ground Maintenance Award 2010*; or
- (i) *Registered and Licensed Clubs Award 2010*.

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

4.5 The award does not cover employees who are covered by a modern enterprise award, or an enterprise instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees.

4.6 The award does not cover employees who are covered by a State reference public sector modern award, or a State reference public sector transitional award (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees.

4.7 This award covers any employer which supplies labour on an on-hire basis in the industry set out in clause 4.1 in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in that industry. This subclause operates subject to the exclusions from coverage in this award.

4.8 This award covers employers which provide group training services for apprentices and trainees engaged in the industry and/or parts of industry set out at clause 4.1 and those apprentices and trainees engaged by a group training service hosted by a company to perform work at a location where the activities described herein are being performed. This subclause operates subject to the exclusions from coverage in this award.

4.9 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

Gardening and Landscaping Services Award 2010

work performed by the employee and to the environment in which the employee normally performs the work.

NOTE: Where there is no classification for a particular employee in this award it is possible that the employer and that employee are covered by an award with occupational coverage.

5. Access to the award and the National Employment Standards

The employer must ensure that copies of this award and the NES are available to all employees to whom they apply either on a noticeboard which is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible.

6. The National Employment Standards and this award

The [NES](#) and this award contain the minimum conditions of employment for employees covered by this award.

7. Award flexibility

7.1 Notwithstanding any other provision of this award, an employer and an individual employee may agree to vary the application of certain terms of this award to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of are those concerning:

- (a) arrangements for when work is performed;
- (b) overtime rates;
- (c) penalty rates;
- (d) allowances; and
- (e) leave loading.

7.2 The employer and the individual employee must have genuinely made the agreement without coercion or duress.

7.3 The agreement between the employer and the individual employee must:

- (a) be confined to a variation in the application of one or more of the terms listed in clause 7.1; and
- (b) result in the employee being better off overall than the employee would have been if no individual flexibility agreement had been agreed to.

7.4 The agreement between the employer and the individual employee must also:

- (a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;

Gardening and Landscaping Services Award 2010

- (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 Fair Work Australia.
- 9.3** The parties may agree on the process to be utilised by Fair Work Australia including mediation, conciliation and consent arbitration.
- 9.4** Where the matter in dispute remains unresolved, Fair Work Australia 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 General

- (a) Employees under this award will be employed in one of the following categories:
 - (i) full-time;
 - (ii) part-time; or
 - (iii) casual.
- (b) At the time of engagement an employer will inform each employee of the terms of their engagement and in particular whether they are to be full-time, part-time or casual.

10.2 Full-time employment

A full-time employee is an employee who is engaged to work an average of 38 ordinary hours per week.

10.3 Part-time employment

- (a) A part-time employee is an employee who:
 - (i) is engaged to work an average of fewer than 38 ordinary hours per week; and
 - (ii) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.
- (b) At the time of engagement the employer and the regular part-time employee will agree in writing, on a regular pattern of work, specifying the hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day. These hours can only be varied by mutual agreement in writing.
- (c) For each ordinary hour worked, a part-time employee will be paid no less than the minimum hourly rate of pay for the relevant classification in clause 14—Minimum wages.

10.4 Casual employment

- (a) A casual employee is one engaged and paid as such. A casual employee's ordinary hours of work are the lesser of an average of 38 hours per week or the hours required to be worked by the employer.
- (b) For each hour worked, a casual employee will be paid no less than the minimum hourly rate of pay for an employee in that classification in clause 14—Minimum wages, plus a casual loading of 25%.

Gardening and Landscaping Services Award 2010

- (c) The casual loading is paid instead of annual leave, personal/carer's leave, notice of termination, redundancy benefits and the other entitlements of full-time or part-time employment provided for in this award.
- (d) A casual employee is entitled to a minimum period of engagement of three hours.

11. Termination of employment

11.1 Notice of termination is provided for in the NES.

11.2 Notice of termination by an employee

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

11.3 Job search entitlement

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

12. Redundancy

12.1 Redundancy pay is provided for in the NES.

12.2 Transfer to lower paid duties

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

12.3 Employee leaving during notice period

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

12.4 Job search entitlement

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

12.5 Transitional provisions

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

Part 4—Minimum Wages and Related Matters

13. Classifications

Employees will be classified in accordance with the classification descriptions contained in Schedule B—Classification Structure.

14. Minimum wages

14.1 The classifications and minimum wages for an adult employee are set out in the following table:

Gardening and Landscaping Services Award 2010

Classification	Minimum weekly wage	Minimum hourly wage
Gardener/Landscaper	\$	\$
Introductory Level	543.90	14.31
Level 1	560.50	14.75
Level 2	583.00	15.34
Level 3	611.00	16.08
Level 4	637.60	16.78
Level 5	658.50	17.33

14.2 Juniors

The minimum wage payable to a junior employee will be the percentage of the adult rate prescribed for the classification in which the employee is employed as set out in the following table:

Age	% of adult rate
17 years and under	70
18 years	80
19 years	90
20 years	100

The wage payable to a junior will, in the case of a weekly employee, be calculated to the nearest \$0.10, and in the case of an hourly employee, be calculated to the nearest quarter of one cent.

14.3 Apprentices

Apprentices must be paid the following minimum percentage of the minimum wage rates for the tradesperson classification:

Year of Apprenticeship	% of Level 4 rate
1st year	47.5
2nd year	60
3rd year	75
4th year	95

14.4 Supported wage system

See Schedule C

14.5 School-based apprentices

See Schedule D

14.6 National training wage

See Schedule E

15. Allowances

15.1 Leading hands

(a) A leading hand (as defined) must be paid a weekly allowance as follows:

In charge of:	% of standard rate
1–2 employees	2
3–6 employees	4
7–9 employees	5
10 or more employees	7

(b) These allowances are in addition to any other wage specified for the employee.

15.2 Vehicles and/or plant

An employee who is required to drive a work vehicle (which requires a licence for a truck or tractor) or operate plant in the course of their work, but not when the employee merely assists a fitter or engineer to do such, will receive an additional payment of 0.6% of the standard rate per day.

15.3 Tool allowance

(a) Tradespersons must be paid a tool allowance of \$12.10 per week, for all purposes of the award.

(b) This allowance does not apply where the employer provides all the tools reasonably required by the tradesperson to perform all the functions of the tradesperson's employment.

(c) An employee provided with tools of the trade by the employer is not responsible for the loss of such tools if outside the control of the employee.

(d) An employee provided with tools of the trade by the employer will replace all or any tools of trade lost due to negligence of the employee.

15.4 Clothing and equipment

(a) Where an employee is required to wear protective clothing (e.g. oilskins, gumboots, overalls, goggles, safety boots, bowling shoes etc.), the employer must reimburse the employee for the cost of purchasing such special clothing and equipment. The provisions of this paragraph do not apply where the clothing and equipment is paid for by the employer.

(b) If required to be worn, the employer will provide the employee with a uniform at the commencement of employment, to be replaced on a fair wear and tear basis. The employer may deduct an agreed amount from the wages due to an employee to cover the cost of the initial uniform issue. The employee will have that amount reimbursed by the employer when the employee returns the uniform on termination of employment or at the expiration of six months from the commencement of employment.

15.5 Travel and accommodation

- (a) Where an employee is required to work away from their usual place of residence, the employer will provide reasonable board and lodging or will pay the demonstrable cost of such lodging.
- (b) An employee who is required to work away from their usual place of employment will, at the direction of the employer, present themselves for work on such a job at the usual starting time. For all time reasonably spent in reaching and returning from such a job in excess of the time normally spent in travelling, they will be paid travel time and fares reasonably incurred in excess of those normally incurred in travelling between home and the depot.

15.6 Vehicle allowance

Where an employee is directed by the employer to use the employee's motor vehicle for any purpose, the employer must pay an allowance of \$0.74 per kilometre travelled. The time spent travelling will be paid for at ordinary rates provided that an employee will not be paid more than an ordinary day's wages for any time not exceeding 24 hours spent in travelling.

15.7 Meal allowance

An employee who is required to work overtime for one and a half hours or more immediately after the completion of their ordinary hours of work on an ordinary working day or immediately after the completion of eight hours of work on a Saturday, Sunday or public holiday, will be paid a meal allowance of \$11.35.

15.8 First aid allowance

An employee holding a first aid qualification from St John Ambulance or equivalent and who is appointed by the employer to perform first aid duties will be paid an allowance of 2% of the standard rate per week.

15.9 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
Tool allowance	Tools component of the household appliances, utensils and tools sub-group
Vehicle allowance	Private motoring sub-group
Meal allowance	Take away and fast foods sub-group

16. District allowances

16.1 Northern Territory

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

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

16.2 Western Australia

An employee in Western Australia is entitled to payment of a district allowance in accordance with the terms of a notional agreement preserving a State award 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-based transitional instrument or enterprise agreement had applied to the employee; and
- (b) that would have entitled the employee to payment of a district allowance.

16.3 This clause ceases to operate on 31 December 2014.

17. Accident pay

17.1 Subject to clause 17.2, an employee is entitled to accident pay in accordance with the terms of:

- (a) a notional agreement preserving a State award 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-based transitional instrument or enterprise agreement 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.

17.2 The employee's entitlement to accident pay under the notional agreement preserving a State award or the award is limited to the amount of accident pay which exceeds the employee's entitlement to accident pay, if any, under any other instrument.

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

17.4 This clause ceases to operate on 31 December 2014.

18. Higher duties

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

18.2 In all other cases the employee will be paid at the higher rate for the actual time worked.

19. Payment of wages

19.1 Period of payment

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

19.2 Method of payment

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

20. Superannuation

20.1 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.

20.2 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.

20.3 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 20.2.

Gardening and Landscaping Services Award 2010

- (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 20.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 20.3(a) or (b) was made.

20.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 20.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 20.2 and pay the amount authorised under clauses 20.3(a) or (b) to one of the following superannuation funds or its successor:

- (a) AustralianSuper;
- (b) HOSTPLUS;
- (c) Cbus Super;
- (d) Asset Super;
- (e) Westscheme;
- (f) Statewide Superannuation Trust;
- (g) AustSafe Super; or
- (h) 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.

20.5 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 20.2 and pay the amount authorised under clauses 20.3(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

21. Ordinary hours of work and rostering

21.1 The ordinary working hours will be 38 or an average of 38 hours per week, Monday to Friday between 6.00 am and 6.00 pm and Saturday between 6.00 am and 12.00 noon or, in accordance with clause 21.3, an average of 38 hours per week over a four week cycle.

21.2 Ordinary hours will not exceed 10 hours per day.

21.3 Rostered days off

(a) An employer may employ a system of rostered days off (instead of working 38 hours per week) by any of the following methods:

(i) by fixing one weekday in a particular working cycle on which all employees will be off; or

(ii) by rostering employees off on various days in a particular work cycle so that each employee has one day off during that cycle; or

(iii) by any other method which best suits the workplace and is agreed to by the employer and a majority of employees affected.

(b) Provided that any existing arrangement will not be altered without the agreement of a majority of employees in the affected workplace.

(i) Where any rostered day off prescribed by this clause above falls on a gazetted public holiday, the next working day will be taken instead of the rostered day off unless an alternative day in that four week cycle or the next is agreed in writing between the employer and the employee.

(ii) Where agreement has been reached between the employee and employer, up to 10 rostered days off may be accumulated and taken at an agreed time.

(c) Each day of paid leave taken (except a rostered day off) and any gazetted public holiday occurring during any cycle of four weeks will be regarded as a day worked for accrual purposes.

21.4 Water restrictions

(a) Where an employer is subject to water restrictions, the employer may require any employee to perform their ordinary hours of work (or any such ordinary hours) at any time on any day other than a Saturday after 12 noon or on a Sunday.

(b) Where the ordinary hours are performed outside the spread of hours specified in clause 21.1, then those hours will be paid at time and a half.

(c) For the purpose of this clause, **water restrictions** means restriction or rationing in the use of water in accordance with orders or regulations approved by the appropriate lawful authority.

22. Overtime and penalty rates

22.1 Payment for working overtime

All time worked in excess of 38 hours a week or outside the spread of hours set out in clause 21—Ordinary hours of work and rostering, or in excess of 10 hours per day will be paid for at the rate of time and a half for the first two hours and double time after that.

22.2 Rest period after overtime duty

- (a) When overtime work is necessary it will, wherever reasonably practicable, be arranged so that employees have at least 10 consecutive hours off duty between the work on successive days.
- (b) Where an employee (other than a casual employee) works so much overtime that there is less than 10 hours between finishing overtime from one day and the commencement of their ordinary work on the next day, the employee will be released, subject to clause 22.2(c) until they have had at least 10 consecutive hours off without loss of pay for ordinary working time occurring during such absence.
- (c) If, on the instructions of the employer, such an employee resumes work or continues work without having had such 10 consecutive hours off duty they will be paid at double time until the employee is released from duty for such period and the employee can then be absent until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

22.3 Transport after overtime work

When an employee after having worked overtime finishes work at a time when reasonable means of transport are not available the employer will provide the employee with transportation to their home.

22.4 Call-back

An employee required to attend for work after leaving the place of employment will be paid a minimum of four hours pay at the appropriate rate for each attendance, provided that the employee will not be required to work a full four hours' work if the job they were recalled to perform is completed within a shorter period.

22.5 Public holiday work

An employee required to work on a public holiday will be paid at the rate of double time and a half with a minimum of four hours' payment.

23. Breaks

23.1 Meal breaks

- (a) A period of not less than 30 minutes, not later than five hours after commencing work, will be allowed for an unpaid meal break.

Gardening and Landscaping Services Award 2010

- (b) An employee required to work through their normal meal break will be paid at the rate of time and a half until such time as they receive a meal break of the customary duration.

23.2 Paid breaks

- (a) An employee working overtime will be allowed a paid break of 20 minutes duration without deduction of pay after each four hours of overtime worked if the employee continues work after such a break.
- (b) Where the period of overtime is to be for more than one and a half hours, an employee will be allowed a meal break of 20 minutes after ordinary hours before starting overtime, paid for at ordinary rates.
- (c) An employer and employee may agree to any variation of the provisions of this clause to meet the circumstances of the work in hand provided that the employer will not be required to make payment in respect of any time allowed in excess of 20 minutes.

23.3 Rest break

Employees will be allowed a paid rest break of 10 minutes each morning. Where agreement is reached between the employer and employee for an additional rest break, such rest break will be unpaid and exclusive of the employee's ordinary hours of work.

Part 6—Leave and Public Holidays

24. Annual leave

24.1 Annual leave is provided for in the NES.

24.2 For the purpose of the NES, a **shiftworker** means an employee whose ordinary working period includes Saturdays, Sundays and/or public holidays which the employee may be regularly rostered to work.

24.3 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.

24.4 Annual leave is to be taken within 18 months of the entitlement accruing. For the purpose of ensuring accrued annual leave is taken within that period, and in the absence of agreement as provided for in the NES, an employer may require an employee to take a period of annual leave from a particular date provided the employee is given at least 28 days' notice.

24.5 Before the start of the employee's annual leave the employer must pay the employee:

- (a) instead of the base rate of pay referred to in the NES, the amount the employee would have earned for working their normal hours, exclusive of overtime, had they not been on leave; and

Gardening and Landscaping Services Award 2010

- (b) an additional loading of 17.5% of the minimum rate prescribed in clause 14—
Minimum wages.

24.6 Annual close-down

- (a) Where an employer intends temporarily to close (or reduce to nucleus) the place of employment or a section of it for the purpose, among others, of allowing annual leave to the employees concerned or a majority of them, the employer may give those employees one month's notice in writing of an intention to apply the provisions of this clause. In the case of any employee engaged after notice has been given, notice must be given to that employee on the date of their engagement.
- (b) Any employee who has accrued annual leave at the date of closing must:
 - (i) be given annual leave commencing from the date of closing; and
 - (ii) be paid 1/12th of their ordinary pay for any period of employment between accrual of the employee's right to the annual leave and the date of closing.
- (c) Any employee who has no accrued annual leave at the date of closing must:
 - (i) be given leave without pay as from the date of closing; and
 - (ii) be paid for any public holiday during such leave for which the employee would otherwise be entitled to payment.

25. Personal/carer's leave and compassionate leave

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

26. Community service leave

Community service leave is provided for in the NES.

27. Public holidays

27.1 Public holidays are provided for in the NES.

27.2 Substitution of certain public holidays by agreement in the workplace

- (a) By agreement between the employer and the majority of employees in the workplace or part of the workplace concerned, an alternative day may be taken as the public holiday instead 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 instead of the day which is being observed as the public holiday in the workplace or part of the workplace concerned.

Schedule A—Transitional Provisions

A.1 General

A.1.1 The provisions of this schedule deal with minimum obligations only.

A.1.2 The provisions of this schedule are to be applied:

- (a) when there is a difference, in money or percentage terms, between a provision in a relevant transitional minimum wage instrument (including the transitional default casual loading) or award-based transitional instrument on the one hand and an equivalent provision in this award on the other;
- (b) when a loading or penalty in a relevant transitional minimum wage instrument or award-based transitional instrument has no equivalent provision in this award;
- (c) when a loading or penalty in this award has no equivalent provision in a relevant transitional minimum wage instrument or award-based transitional instrument; or
- (d) when there is a loading or penalty in this award but there is no relevant transitional minimum wage instrument or award-based transitional instrument.

A.2 Minimum wages – existing minimum wage lower

A.2.1 The following transitional arrangements apply to an employer which, immediately prior to 1 January 2010:

- (a) was obliged,
- (b) but for the operation of an agreement-based transitional instrument or an enterprise agreement would have been obliged, or
- (c) if it had been an employer in the industry or of the occupations covered by this award would have been obliged

by a transitional minimum wage instrument and/or an award-based transitional instrument to pay a minimum wage lower than that in this award for any classification of employee.

A.2.2 In this clause minimum wage includes:

- (a) a minimum wage for a junior employee, an employee to whom training arrangements apply and an employee with a disability;
- (b) a piecework rate; and
- (c) any applicable industry allowance.

A.2.3 Prior to the first full pay period on or after 1 July 2010 the employer must pay no less than the minimum wage in the relevant transitional minimum wage instrument and/or award-based transitional instrument for the classification concerned.

A.2.4 The difference between the minimum wage for the classification in this award and the minimum wage in clause A.2.3 is referred to as the transitional amount.

Gardening and Landscaping Services Award 2010

A.2.5 From the following dates the employer must pay no less than the minimum wage for the classification in this award minus the specified proportion of the transitional amount:

First full pay period on or after

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

A.2.6 The employer must apply any increase in minimum wages in this award resulting from an annual wage review.

A.2.7 These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2014.

A.3 Minimum wages – existing minimum wage higher

A.3.1 The following transitional arrangements apply to an employer which, immediately prior to 1 January 2010:

- (a) was obliged,
- (b) but for the operation of an agreement-based transitional instrument or an enterprise agreement would have been obliged, or
- (c) if it had been an employer in the industry or of the occupations covered by this award would have been obliged

by a transitional minimum wage instrument and/or an award-based transitional instrument to pay a minimum wage higher than that in this award for any classification of employee.

A.3.2 In this clause minimum wage includes:

- (a) a minimum wage for a junior employee, an employee to whom training arrangements apply and an employee with a disability;
- (b) a piecework rate; and
- (c) any applicable industry allowance.

A.3.3 Prior to the first full pay period on or after 1 July 2010 the employer must pay no less than the minimum wage in the relevant transitional minimum wage instrument and/or award-based transitional instrument for the classification concerned.

A.3.4 The difference between the minimum wage for the classification in this award and the minimum wage in clause A.3.3 is referred to as the transitional amount.

Gardening and Landscaping Services Award 2010

A.3.5 From the following dates the employer must pay no less than the minimum wage for the classification in this award plus the specified proportion of the transitional amount:

First full pay period on or after

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

A.3.6 The employer must apply any increase in minimum wages in this award resulting from an annual wage review. If the transitional amount is equal to or less than any increase in minimum wages resulting from the 2010 annual wage review the transitional amount is to be set off against the increase and the other provisions of this clause will not apply.

A.3.7 These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2014.

A.4 Loadings and penalty rates

For the purposes of this schedule loading or penalty means a:

- casual or part-time loading;
- Saturday, Sunday, public holiday, evening or other penalty;
- shift allowance/penalty.

A.5 Loadings and penalty rates – existing loading or penalty rate lower

A.5.1 The following transitional arrangements apply to an employer which, immediately prior to 1 January 2010:

- (a) was obliged,
- (b) but for the operation of an agreement-based transitional instrument or an enterprise agreement would have been obliged, or
- (c) if it had been an employer in the industry or of the occupations covered by this award would have been obliged

by the terms of a transitional minimum wage instrument or an award-based transitional instrument to pay a particular loading or penalty at a lower rate than the equivalent loading or penalty in this award for any classification of employee.

A.5.2 Prior to the first full pay period on or after 1 July 2010 the employer must pay no less than the loading or penalty in the relevant transitional minimum wage instrument or award-based transitional instrument for the classification concerned.

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

Gardening and Landscaping Services Award 2010

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

First full pay period on or after

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

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

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

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

- (a) was obliged,
- (b) but for the operation of an agreement-based transitional instrument or an enterprise agreement would have been obliged, or
- (c) if it had been an employer in the industry or of the occupations covered by this award would have been obliged

by the terms of a transitional minimum wage instrument or an award-based transitional instrument to pay a particular loading or penalty at a higher rate than the equivalent loading or penalty in this award, or to pay a particular loading or penalty and there is no equivalent loading or penalty in this award, for any classification of employee.

A.6.2 Prior to the first full pay period on or after 1 July 2010 the employer must pay no less than the loading or penalty in the relevant transitional minimum wage instrument or award-based transitional instrument.

A.6.3 The difference between the loading or penalty in this award and the rate in clause A.6.2 is referred to as the transitional percentage. Where there is no equivalent loading or penalty in this award, the transitional percentage is the rate in A.6.2.

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

First full pay period on or after

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

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

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

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

A.7.2 Prior to the first full pay period on or after 1 July 2010 the employer need not pay the loading or penalty in this award.

A.7.3 From the following dates the employer must pay no less than the following percentage of the loading or penalty in this award:

First full pay period on or after

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

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

Schedule B—Classification Structure

B.1 Introductory level

This is an entry level position.

An employee at this level is undertaking training for a period of not more than three months which may include information on the workplace, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, workplace layout, work and documentation procedures, occupational health and safety, equal employment opportunity and quality control/assurances.

An employee at this level performs routine duties essentially of a manual nature and to the level of their training:

- (a) performs general labouring and cleaning duties;
- (b) exercises minimal judgment;
- (c) works under direct supervision;
- (d) undertakes training so as to enable them to work at Level 1; and
- (e) assists on trade works and routine landscape tasks.

B.2 Level 1

An employee at this level performs simple or routine tasks essentially of a manual nature and to the level of their training:

- (a) exercises minimal skills, knowledge and decision-making;
- (b) works under direct supervision, and is given regular direction or guidance and results are constantly monitored; and
- (c) undertakes general gardening/landscaping duties.

B.3 Level 2

An employee at this level performs work above and beyond the skills of an employee at Level 1 and to the level of their skills, competence and training:

- (a) works in accordance with standard operating procedures and established criteria;
- (b) works under direct supervision either individually or in a team environment;
- (c) understands and undertakes basic quality control/assurance procedures including the ability to recognise basic quality deviations/faults;
- (d) understands and utilises basic statistical process control procedures;
- (e) follows safe work practices and can report workplace hazards; and
- (f) uses, and performs routine maintenance on, gardening tools and equipment.

B.4 Level 3

An employee at this level will have completed a course in horticulture at a recognised training institution and performs work above and beyond the skills of an employee at Level 2 and to the level of their skills, competence and training:

- (a) is responsible for the quality of their own work subject to routine supervision;
- (b) works under routine supervision either individually or in a team environment;
- (c) exercises discretion within their level of skills and training;
- (d) assists in the provision of on-the-job training; and
- (e) is experienced in gardening work and has demonstrated competence in plant and lawn maintenance and development, tree and shrub identification and the use and care of lawn mowers, edging machines and rotary hoes.

B.5 Level 4

B.5.1 An employee at this level will have:

- (a) completed a satisfactory period of apprenticeship in horticulture and possesses a recognised trade qualification;
- (b) completed a Parks and Gardens Certificate III, a Landscaping Certificate III, a Greenkeeping Certificate III or equivalent; or
- (c) not less than three years' experience in practical horticulture and possesses the skills, knowledge and experience to perform work within the scope of this level.

B.5.2 An employee at this level performs work above and beyond a Level 3 employee and to the level of their skills, competence and training:

- (a) understands and applies quality control techniques;
- (b) exercises good interpersonal and communications skills;
- (c) exercises discretion within the scope of this classification level;
- (d) performs work under limited supervision either individually or in a team environment;
- (e) performs work which while primarily involving the skills of the employee's trade is incidental or peripheral to the primary task and facilitates the completion of the whole task. Such incidental or peripheral work would not require additional formal technical training; and
- (f) is able to inspect products and/or materials for conformity with established operational standards.

B.6 Level 5

B.6.1 An employee at this level:

- (a) is a trades qualified person who has completed relevant post trade training at Certificate IV or Diploma level from a recognised Registered Training Organisation; or
- (b) holds a trade certificate and/or possesses the skills, knowledge and experience to perform work within the scope of this level.

B.6.2 An employee at this level performs work above and beyond a Level 4 employee, and to the level of their skills, competence and training:

- (a) works from complex instructions and procedures;
- (b) assists in the provision of on-the-job training;
- (c) co-ordinates work in a team environment or works individually under general supervision; and
- (d) is responsible for assuring the quality of their own work.

B.6.3 An employee at this level may be in charge of gardens, engaged in maintenance and/or development of suburban areas, parks, gardens and specialised horticultural construction work.

Schedule C—Supported Wage System

C.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.

C.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* (Cth), 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 (SWS) 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

C.3 Eligibility criteria

C.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.

C.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.

C.4 Supported wage rates

C.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 C.5)	Relevant minimum wage
%	%
10	10
20	20
30	30
40	40
50	50
60	60
70	70
80	80
90	90

C.4.2 Provided that the minimum amount payable must be not less than \$71 per week.

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

C.5 Assessment of capacity

C.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.

C.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.

C.6 Lodgement of SWS wage assessment agreement

C.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 Fair Work Australia.

C.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 Fair Work Australia to the union by certified mail and the agreement will take effect unless an objection is notified to Fair Work Australia within 10 working days.

C.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.

C.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.

C.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.

C.10 Trial period

C.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.

C.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.

C.10.3 The minimum amount payable to the employee during the trial period must be no less than \$71 per week.

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

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

Schedule D—School-based Apprentices

- D.1** This schedule applies to school-based apprentices. A school-based apprentice is a person who is undertaking an apprenticeship in accordance with this schedule while also undertaking a course of secondary education.
- D.2** A school-based apprenticeship may be undertaken in the trades covered by this award under a training agreement or contract of training for an apprentice declared or recognised by the relevant State or Territory authority.
- D.3** The relevant minimum wages for full-time junior and adult apprentices provided for in this award, calculated hourly, will apply to school-based apprentices for total hours worked including time deemed to be spent in off-the-job training.
- D.4** For the purposes of clause D.3, where an apprentice is a full-time school student, the time spent in off-the-job training for which the apprentice must be paid is 25% of the actual hours worked each week on-the-job. The wages paid for training time may be averaged over the semester or year.
- D.5** A school-based apprentice must be allowed, over the duration of the apprenticeship, the same amount of time to attend off-the-job training as an equivalent full-time apprentice.
- D.6** For the purposes of this schedule, off-the-job training is structured training delivered by a Registered Training Organisation separate from normal work duties or general supervised practice undertaken on the job.
- D.7** The duration of the apprenticeship must be as specified in the training agreement or contract for each apprentice but must not exceed six years.
- D.8** School-based apprentices progress through the relevant wage scale at the rate of 12 months progression for each two years of employment as an apprentice.
- D.9** The apprentice wage scales are based on a standard full-time apprenticeship of four years (unless the apprenticeship is of three years duration). The rate of progression reflects the average rate of skill acquisition expected from the typical combination of work and training for a school-based apprentice undertaking the applicable apprenticeship.
- D.10** If an apprentice converts from school-based to full-time, all time spent as a full-time apprentice will count for the purposes of progression through the relevant wage scale in addition to the progression achieved as a school-based apprentice.
- D.11** School-based apprentices are entitled pro rata to all of the other conditions in this award.

Schedule E—National Training Wage

E.1 Title

This is the *National Training Wage Schedule*.

E.2 Definitions

In this schedule:

adult trainee is a trainee who would qualify for the highest minimum wage in Wage Level A, B or C if covered by that wage level

approved training means the training specified in the training contract

Australian Qualifications Framework (AQF) is a national framework for qualifications in post-compulsory education and training

out of school refers only to periods out of school beyond Year 10 as at the first of January in each year and is deemed to:

- (c) include any period of schooling beyond Year 10 which was not part of or did not contribute to a completed year of schooling;
- (d) include any period during which a trainee repeats in whole or part a year of schooling beyond Year 10; and
- (e) not include any period during a calendar year in which a year of schooling is completed

relevant State or Territory training authority means the bodies in the relevant State or Territory which exercise approval powers in relation to traineeships and register training contracts under the relevant State or Territory vocational education and training legislation

relevant State or Territory vocational education and training legislation means the following or any successor legislation:

Australian Capital Territory: *Training and Tertiary Education Act 2003*;

New South Wales: *Apprenticeship and Traineeship Act 2001*;

Northern Territory: *Northern Territory Employment and Training Act 1991*;

Queensland: *Vocational Education, Training and Employment Act 2000*;

South Australia: *Training and Skills Development Act 2008*;

Tasmania: *Vocational Education and Training Act 1994*;

Victoria: *Education and Training Reform Act 2006*; or

Western Australia: *Vocational Education and Training Act 1996*

trainee is an employee undertaking a traineeship under a training contract

Gardening and Landscaping Services Award 2010

traineeship means a system of training which has been approved by the relevant State or Territory training authority, which meets the requirements of a training package developed by the relevant Industry Skills Council and endorsed by the National Quality Council, and which leads to an AQF certificate level qualification

training contract means an agreement for a traineeship made between an employer and an employee which is registered with the relevant State or Territory training authority

training package means the competency standards and associated assessment guidelines for an AQF certificate level qualification which have been endorsed for an industry or enterprise by the National Quality Council and placed on the National Training Information Service with the approval of the Commonwealth, State and Territory Ministers responsible for vocational education and training, and includes any relevant replacement training package

year 10 includes any year before Year 10

E.3 Coverage

- E.3.1** Subject to clauses E.3.2 to E.3.6 of this schedule, this schedule applies in respect of an employee covered by this award who is undertaking a traineeship whose training package and AQF certificate level is allocated to a wage level by Appendix E1 to this schedule or by clause E.3.4 of this schedule.
- E.3.2** This schedule only applies to AQF Certificate Level IV traineeships for which a relevant AQF Certificate Level III traineeship is listed in Appendix E1 to this schedule.
- E.3.3** This schedule does not apply to the apprenticeship system or to any training program which applies to the same occupation and achieves essentially the same training outcome as an existing apprenticeship in an award as at 25 June 1997.
- E.3.4** This schedule does not apply to qualifications not identified in training packages or to qualifications in training packages which are not identified as appropriate for a traineeship.
- E.3.5** Where the terms and conditions of this schedule conflict with other terms and conditions of this award dealing with traineeships, the other terms and conditions of this award prevail.
- E.3.6** At the conclusion of the traineeship, this schedule ceases to apply to the employee.

E.4 Types of Traineeship

The following types of traineeship are available under this schedule:

- E.4.1** a full-time traineeship based on 38 ordinary hours per week, with 20% of ordinary hours being approved training; and
- E.4.2** a part-time traineeship based on less than 38 ordinary hours per week, with 20% of ordinary hours being approved training solely on-the-job or partly on-the-job and partly off-the-job, or where training is fully off-the-job.

E.5 Minimum Wages

E.5.1 Minimum wages for full-time traineeships

(a) Wage Level A

Subject to clause E.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level A by Appendix E1 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	per week	per week
	\$	\$	\$
School leaver	245.00	270.00	323.00
Plus 1 year out of school	270.00	323.00	375.00
Plus 2 years out of school	323.00	375.00	437.00
Plus 3 years out of school	375.00	437.00	500.00
Plus 4 years out of school	437.00	500.00	
Plus 5 or more years out of school	500.00		

(b) Wage Level B

Subject to clause E.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level B by Appendix E1 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	per week	per week
	\$	\$	\$
School leaver	245.00	270.00	313.00
Plus 1 year out of school	270.00	313.00	360.00
Plus 2 years out of school	313.00	360.00	423.00
Plus 3 years out of school	360.00	423.00	482.00
Plus 4 years out of school	423.00	482.00	
Plus 5 or more years out of school	482.00		

(c) Wage Level C

Subject to clause E.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level C by Appendix E1 are:

Gardening and Landscaping Services Award 2010

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	per week	per week
	\$	\$	\$
School leaver	245.00	270.00	312.00
Plus 1 year out of school	270.00	312.00	351.00
Plus 2 years out of school	312.00	351.00	392.00
Plus 3 years out of school	351.00	392.00	437.00
Plus 4 years out of school	392.00	437.00	
Plus 5 or more years out of school	437.00		

(d) AQF Certificate Level IV traineeships

- (i) Subject to clause E.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level IV traineeship are the minimum wages for the relevant full-time AQF Certificate Level III traineeship with the addition of 3.8% to those minimum wages.
- (ii) Subject to clause E.5.3 of this schedule, the minimum wages for an adult trainee undertaking a full-time AQF Certificate Level IV traineeship are as follows, provided that the relevant wage level is that for the relevant AQF Certificate Level III traineeship:

Wage level	First year of	Second and
	traineeship	subsequent years of
	per week	per week
	\$	\$
Wage Level A	519.00	539.00
Wage Level B	500.00	519.00
Wage Level C	454.00	471.00

E.5.2 Minimum wages for part-time traineeships

(a) Wage Level A

Subject to clauses E.5.2(f) and E.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level A by Appendix E1 are:

Gardening and Landscaping Services Award 2010

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
School leaver	8.06	8.88	10.63
Plus 1 year out of school	8.88	10.63	12.34
Plus 2 years out of school	10.63	12.34	14.38
Plus 3 years out of school	12.34	14.38	16.45
Plus 4 years out of school	14.38	16.45	
Plus 5 or more years out of school	16.45		

(b) Wage Level B

Subject to clauses E.5.2(f) and E.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level B by Appendix E1 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
School leaver	8.06	8.88	10.30
Plus 1 year out of school	8.88	10.30	11.84
Plus 2 years out of school	10.30	11.84	13.91
Plus 3 years out of school	11.84	13.91	15.86
Plus 4 years out of school	13.91	15.86	
Plus 5 or more years out of school	15.86		

(c) Wage Level C

Subject to clauses E.5.2(f) and E.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level C by Appendix E1 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
School leaver	8.06	8.88	10.26
Plus 1 year out of school	8.88	10.26	11.55
Plus 2 years out of school	10.26	11.55	12.89
Plus 3 years out of school	11.55	12.89	14.38

Gardening and Landscaping Services Award 2010

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
Plus 4 years out of school	12.89	14.38	
Plus 5 or more years out of school	14.38		

(d) School-based traineeships

Subject to clauses E.5.2(f) and E.5.3 of this schedule, the minimum wages for a trainee undertaking a school-based AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Levels A, B or C by Appendix E1 are as follows when the trainee works ordinary hours:

Year of schooling	
Year 11 or lower	Year 12
per hour	per hour
\$	\$
8.06	8.88

(e) AQF Certificate Level IV traineeships

- (i) Subject to clauses E.5.2(f) and E.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level IV traineeship are the minimum wages for the relevant part-time AQF Certificate Level III traineeship with the addition of 3.8% to those minimum wages.
- (ii) Subject to clauses E.5.2(f) and E.5.3 of this schedule, the minimum wages for an adult trainee undertaking a part-time AQF Certificate Level IV traineeship are as follows, provided that the relevant wage level is that for the relevant AQF Certificate Level III traineeship:

Wage level	First year of traineeship	Second and subsequent years of traineeship
	per hour	per hour
	\$	\$
Wage Level A	17.07	17.73
Wage Level B	16.45	17.07
Wage Level C	14.93	15.49

(f) Calculating the actual minimum wage

- (i) Where the full-time ordinary hours of work are not 38 or an average of 38 per week, the appropriate hourly minimum wage is obtained by multiplying the relevant minimum wage in clauses E.5.2(a)–(e) of this schedule by 38 and then dividing the figure obtained by the full-time ordinary hours of work per week.

Gardening and Landscaping Services Award 2010

- (ii) Where the approved training for a part-time traineeship is provided fully off-the-job by a registered training organisation, for example at school or at TAFE, the relevant minimum wage in clauses E.5.2(a)–(e) of this schedule applies to each ordinary hour worked by the trainee.
- (iii) Where the approved training for a part-time traineeship is undertaken solely on-the-job or partly on-the-job and partly off-the-job, the relevant minimum wage in clauses E.5.2(a)–(e) of this schedule minus 20% applies to each ordinary hour worked by the trainee.

E.5.3 Other minimum wage provisions

- (a) An employee who was employed by an employer immediately prior to becoming a trainee with that employer must not suffer a reduction in their minimum wage per week or per hour by virtue of becoming a trainee. Casual loadings will be disregarded when determining whether the employee has suffered a reduction in their minimum wage.
- (b) If a qualification is converted from an AQF Certificate Level II to an AQF Certificate Level III traineeship, or from an AQF Certificate Level III to an AQF Certificate Level IV traineeship, then the trainee must be paid the next highest minimum wage provided in this schedule, where a higher minimum wage is provided for the new AQF certificate level.

E.5.4 Default wage rate

The minimum wage for a trainee undertaking an AQF Certificate Level I–III traineeship whose training package and AQF certificate level are not allocated to a wage level by Appendix E1 is the relevant minimum wage under this schedule for a trainee undertaking an AQF Certificate to Level I–III traineeship whose training package and AQF certificate level are allocated to Wage Level B.

E.6 Employment conditions

- E.6.1** A trainee undertaking a school-based traineeship may, with the agreement of the trainee, be paid an additional loading of 25% on all ordinary hours worked instead of paid annual leave, paid personal/carer's leave and paid absence on public holidays, provided that where the trainee works on a public holiday then the public holiday provisions of this award apply.
- E.6.2** A trainee is entitled to be released from work without loss of continuity of employment and to payment of the appropriate wages to attend any training and assessment specified in, or associated with, the training contract.
- E.6.3** Time spent by a trainee, other than a trainee undertaking a school-based traineeship, in attending any training and assessment specified in, or associated with, the training contract is to be regarded as time worked for the employer for the purposes of calculating the trainee's wages and determining the trainee's employment conditions.
- E.6.4** Subject to clause E.3.5 of this schedule, all other terms and conditions of this award apply to a trainee unless specifically varied by this schedule.

Appendix E1: Allocation of Traineeships to Wage Levels

The wage levels applying to training packages and their AQF certificate levels are:

E1.1 Wage Level A

Training package	AQF certificate level
Aeroskills	II
Aviation	I II III
Beauty	III
Business Services	I II III
Chemical, Hydrocarbons and Refining	I II III
Civil Construction	III
Coal Training Package	II III
Community Services	II III
Construction, Plumbing and Services Integrated Framework	I II III
Correctional Services	II III
Drilling	II III
Electricity Supply Industry—Generation Sector	II III (in Western Australia only)
Electricity Supply Industry—Transmission, Distribution and Rail Sector	II
Electrotechnology	I II III (in Western Australia only)
Financial Services	I II III
Floristry	III
Food Processing Industry	III

Gardening and Landscaping Services Award 2010

Training package	AQF certificate level
Gas Industry	III
Information and Communications Technology	I II III
Laboratory Operations	II III
Local Government (other than Operational Works Cert I and II)	I II III
Manufactured Mineral Products	III
Manufacturing	I II III
Maritime	I II III
Metal and Engineering (Technical)	II III
Metalliferous Mining	II III
Museum, Library and Library/Information Services	II III
Plastics, Rubber and Cablemaking	III
Public Safety	III
Public Sector	II III
Pulp and Paper Manufacturing Industries	III
Retail Services (including wholesale and Community pharmacy)	III
Telecommunications	II III
Textiles, Clothing and Footwear	III
Tourism, Hospitality and Events	I II III
Training and Assessment	III
Transport and Distribution	III
Water Industry (Utilities)	III

E1.2 Wage Level B

Training package	AQF certificate level
Animal Care and Management	I II III
Asset Maintenance	I II III
Australian Meat Industry	I II III
Automotive Industry Manufacturing	II III
Automotive Industry Retail, Service and Repair	I II III
Beauty	II
Caravan Industry	II III
Civil Construction	I
Community Recreation Industry	III
Entertainment	I II III
Extractive Industries	II III
Fitness Industry	III
Floristry	II
Food Processing Industry	I II
Forest and Forest Products Industry	I II III
Furnishing	I II III
Gas Industry	I II
Health	II III
Local Government (Operational Works)	I II
Manufactured Mineral Products	I

Gardening and Landscaping Services Award 2010

Training package	AQF certificate level
	II
Metal and Engineering (Production)	II III
Outdoor Recreation Industry	I II III
Plastics, Rubber and Cablemaking	II
Printing and Graphic Arts	II III
Property Services	I II III
Public Safety	I II
Pulp and Paper Manufacturing Industries	I II
Retail Services	I II
Screen and Media	I II III
Sport Industry	II III
Sugar Milling	I II III
Textiles, Clothing and Footwear	I II
Transport and Logistics	I II
Visual Arts, Craft and Design	I II III
Water Industry	I II

E1.3 Wage Level C

Training package	AQF certificate level
Agri-Food	I
Amenity Horticulture	I II III
Conservation and Land Management	I II III
Funeral Services	I II III
Music	I II III
Racing Industry	I II III
Rural Production	I II III
Seafood Industry	I II III