

## Residual Safety Net Award 2010

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## Part 1—Application and Operation

### 1. Title

This award is the *Residual Safety Net Award 2010*.

### 2. Commencement date

This award commences on 1 January 2010.

### 3. Definitions and interpretation

3.1 In this award, unless the contrary intention appears:

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

**Commission** means the Australian Industrial Relations Commission or its successor

**employee** has the meaning in the Act

**employer** has the meaning in the Act

**enterprise award** has the meaning in the Act

**enterprise NAPSA** means a NAPSA derived from a State award which immediately prior to 27 March 2006 applied only to a single business or part of a single business

**NAPSA** means notional agreement preserving a State award and has the meaning in the Act

**NES** means National Employment Standards

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 award covers employers and employees of employers throughout Australia who:

(a) are not covered by another award; and

(b) who perform similar work to that which is covered by pre-modernised awards and/or NAPSAs.

### 4.2 Exclusions

This award does not cover:

(a) an employee excluded from award coverage by the Act;

- (b) an employer bound by an enterprise award or enterprise NAPSAs in respect to an employee who is covered by the enterprise award or NAPSAs;
- (c) employees who because of the nature or seniority of their role, have not traditionally been covered by pre-modernised awards or NAPSAs, including, but not limited to:
  - (i) managerial employees; and
  - (ii) professional employees

## **5. Access to the award and the National Employment Standards**

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

## **6. The National Employment Standards and this award**

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

## **7. Award flexibility**

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

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

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

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

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

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

- (a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;
  - (b) state each term of this award that the employer and the individual employee have agreed to vary;
  - (c) detail how the application of each term has been varied by agreement between the employer and the individual employee;
  - (d) detail how the agreement results in the individual employee being better off overall in relation to the individual employee's terms and conditions of employment; and
  - (e) state the date the agreement commences to operate.
- 7.5 The employer must give the individual employee a copy of the agreement and keep the agreement as a time and wages record.
- 7.6 Except as provided in clause 7.4(a) the agreement must not require the approval or consent of a person other than the employer and the individual employee.
- 7.7 An employer seeking to enter into an agreement must provide a written proposal to the employee. Where the employee's understanding of written English is limited the employer must take measures, including translation into an appropriate language, to ensure the employee understands the proposal.
- 7.8 The agreement may be terminated:
- (a) by the employer or the individual employee giving four weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or
  - (b) at any time, by written agreement between the employer and the individual employee.
- 7.9 The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between an employer and an individual employee contained in any other term of this award.

## Part 2—Consultation and Dispute Resolution

### 8. Consultation regarding major workplace change

#### 8.1 Employer to notify

- (a) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must notify the employees who may be affected by the proposed changes and their representatives, if any.
- (b) **Significant effects** include termination of employment; major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of

employees to other work or locations; and the restructuring of jobs. Provided that where this award makes provision for alteration of any of these matters an alteration is deemed not to have significant effect.

## **8.2 Employer to discuss change**

- (a) The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 8.1, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.
- (b) The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 8.1.
- (c) For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives, if any, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that no employer is required to disclose confidential information, the disclosure of which would be contrary to the employer's interests.

## **9. Dispute resolution**

- 9.1** In the event of a dispute about a matter under this award, or a dispute in relation to the NES, in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.
- 9.2** If a dispute about a matter arising under this award or a dispute in relation to the NES is unable to be resolved at the workplace, and all appropriate steps under clause 9.1 have been taken, a party to the dispute may refer the dispute to the Commission.
- 9.3** The parties may agree on the process to be utilised by the Commission including mediation, conciliation and consent arbitration.
- 9.4** Where the matter in dispute remains unresolved, the Commission may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute.
- 9.5** An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.
- 9.6** While the dispute resolution procedure is being conducted, work must continue in accordance with this award and the Act. Subject to applicable occupational health and safety legislation, an employee must not unreasonably fail to comply with a direction by the employer to perform work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

## **Part 3—Types of Employment and Termination of Employment**

### **10. Types of employment**

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

#### **10.1 Full-time employment**

An employee not specifically engaged as being a part-time or casual employee is for all purposes of this award a full-time employee, unless otherwise specified in this award.

#### **10.2 Part-time employment**

(a) An employee may be engaged to work on a part-time basis involving a regular pattern of hours which will average less than 38 hours per week. An employee so engaged will be paid per hour 1/38th of the weekly rate prescribed by clause 13 —Minimum wage rates, of this award for the work performed.

(b) The terms of this award will apply pro rata to part-time employees on the basis that ordinary weekly hours for full-time employees are 38 hours.

#### **10.3 Casual employment**

(a) An employer may engage employees on a casual basis in which case employment may be terminated by an hour's notice given either by the employer or the employee, or by the payment or forfeiture of an hour's wage as the case may be.

(b) A casual employee is one engaged and paid as such, and for working ordinary time will be paid per hour 1/38th of the weekly wage prescribed by this award for the work which the employee performs, plus 25%.

### **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 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.

### **12.3 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 will be sufficient.
- (c) This entitlement applies instead of clause 11.3.

### **12.4 Transitional provisions**

- (a) Subject to clause 12.4(b), an employee whose employment is terminated by an employer is entitled to redundancy pay in accordance with the terms of a NAPSA:
  - (i) that would have applied to the employee immediately prior to 1 January 2010, if the employee had at that time been in their current circumstances of employment and no agreement made under the Act had applied to the employee; and
  - (ii) that would have entitled the employee to redundancy pay in excess of the employee's entitlement to redundancy pay, if any, under the NES.
- (b) The employee's entitlement to redundancy pay under the NAPSA is limited to the amount of redundancy pay which exceeds the employee's entitlement to redundancy pay, if any, under the NES.
- (c) This clause does not operate to diminish an employee's entitlement to redundancy pay under any other instrument.
- (d) This clause ceases to operate on 31 December 2014.

## **Part 4—Minimum Wages and Related Matters**

### **13. Minimum wage rates**

#### **13.1 Adult employees**

A full-time adult employee must be paid a minimum weekly rate of \$543.90.

### **13.2 Junior employees**

Junior employees will be entitled to the percentage of the applicable adult weekly wage (in the case of part-time or casual employees the hourly rate) for their classification as set out in the table below:

<b>Age</b>	<b>Percentage of adult rate</b>
	<i>%</i>
Under 16 years	40
16 years	50
17 years	60
18 years	70
19 years	80
20 years	90

### **14. Supported wage system**

See Schedule A

### **15. Payment of wages**

**15.1** At the election of the employer, wages may be paid weekly, fortnightly or monthly.

**15.2** Wages may be paid by electronic funds transfer, cash or cheque.

## **Part 5—Hours of Work and Related Matters**

### **16. Hours of work**

**16.1** The ordinary hours of work are to be an average of 38 per week.

### **17. Breaks**

**17.1** Except as provided for in clause 17.2, where practicable, an employee will not be required to work for more than five hours without a break for a meal which will be unpaid and of at least 30 minutes.

#### **17.2 Flexibility in relation to meal breaks**

(a) Subject to agreement between the employer and the majority of the employees concerned in the workplace or relevant section/s, employees may work in excess of

five hours but not more than six hours without a meal break. Agreement in this respect may also be reached between the employer and an individual employee.

- (b) Where an agreement is reached by the majority of employees, it will apply to all the employees in the workplace or section/s to which the agreement applies. This does not in any way restrict the application of an individual agreement.

## **Part 6—Leave and Public Holidays**

### **18. Annual leave**

**18.1** This clause of the award supplements the provisions of the NES which deal with annual leave. Annual leave does not apply to casual employees.

### **18.2 Payment for annual leave**

In addition to the payment specified in s35(1) of the NES, employees must be paid an annual leave loading of 17.5%.

### **18.3 Excessive leave**

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

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

### **18.4 Annual close-down**

- (a) An employer may close down an enterprise or part of it for the purpose of allowing annual leave to all or the majority of the employees in the enterprise or part concerned, provided that the employer gives at least one month's notice to the affected employees. The notice will advise employees of the commencement date and duration of the close-down.
- (b) An employer may close down for one or two periods. Where there is agreement between the employer and the majority of employees concerned, an employer may close down for more than two periods.
- (c) An employee who has accrued sufficient leave to cover the period of the close-down, is allowed leave and also paid for that leave at the appropriate wage in accordance with clause 13—Classifications and minimum wage rates. An employee who has not accrued sufficient leave to cover part or all of the close-down is allowed paid leave for the period for which they have accrued sufficient leave and given unpaid leave for the remainder of the closedown.

## **19. Personal/carer's leave and compassionate leave**

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

## **20. Community service leave**

Community service leave is provided for in the NES.

## **21. Public holidays**

**21.1** Employees are entitled to public holidays in accordance with the NES.

### **21.2 Substitution of public holidays**

An employer and a majority of affected employees or an individual employee may reach agreement in writing to substitute a day or part-day for a day or part-day that would otherwise be a public holiday under terms of the NES.

## Schedule A—Supported Wage System

**A.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.

**A.2** In this schedule:

**approved assessor** means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual's productive capacity within the supported wage system

**assessment instrument** means the tool provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system

**disability support pension** means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991*, as amended from time to time, or any successor to that scheme

**relevant minimum wage** means the minimum wage prescribed in this award for the class of work for which an employee is engaged

**supported wage system** means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from the following website: [www.jobaccess.gov.au](http://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

### **A.3 Eligibility criteria**

**A.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.

**A.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.

## **A.4 Supported wage rates**

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

<b>Assessed capacity (clause A.5)</b>	<b>Relevant minimum wage</b>
<b>%</b>	<b>%</b>
10	10
20	20
30	30
40	40
50	50
60	60
70	70
80	80
90	90

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

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

## **A.5 Assessment of capacity**

**A.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.

**A.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.

## **A.6 Lodgement of SWS wage assessment agreement**

**A.6.1** All SWS wage assessment agreements under the conditions of this schedule, including the appropriate percentage of the relevant minimum wage to be paid to the employee, must be lodged by the employer with the Commission.

**A.6.2** All SWS wage assessment agreements must be agreed and signed by the employee and employer parties to the assessment. Where a union which has an interest in the award is not a party to the assessment, the assessment will be referred by the Industrial Registrar to the union by certified mail and the agreement will take effect unless an objection is notified to the Commission within 10 working days.

## **A.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.

## **A.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.

## **A.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.

## **A.10 Trial period**

- A.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.
- A.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.
- A.10.3** The minimum amount payable to the employee during the trial period must be no less than \$69 per week.
- A.10.4** Work trials should include induction or training as appropriate to the job being trialled.
- A.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 A.5.