

# Professional Employees Award 2010

The above award was first made on 4 September 2009 [[PR988777](#)]

This consolidated version of the award includes variations made on 2 December 2009 [[PR991335](#)]; 16 December 2009 [[PR991573](#)]; 22 January 2010 [[PR992791](#)]; 16 March 2010 [[PR994537](#)]; 4 June 2010 [[PR997772](#)]; 21 June 2010 [[PR997943](#)]

NOTE: **Transitional provisions** may apply to certain clauses – see [clause 2](#) and [Schedule A](#)

This [link](#) is to the version of this modern award in operation prior to 1 July 2010. It does not include:

- (a) variations to minimum wages resulting from the Annual Wage Review 2009-10; or
- (b) variations in expense related allowances operative from 1 July 2010.

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## Part 1—Application and Operation

### 1. Title

This award is the *Professional Employees 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

[Varied by [PR994537](#), [PR997772](#)]

3.1 In this award, unless the contrary intention appears:

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

[Definition of **agreement-based transitional instrument** inserted by [PR994537](#) from 01Jan10]

**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)

**carry** includes transmit, switch or receive

**communications** includes any communication whether between persons and persons, things and things or persons and things, and whether in the form of:

- (a) speech, music, or other sounds;
- (b) data;
- (c) text;
- (d) visual images, whether or not animated; or
- (e) signals,

in any other form or other combination of forms

**core competency standards** means the competency standards developed for a graduate's relevant professional discipline. Progress by a graduate towards attaining core competency standards will be assessed by comparison with the specified performance criteria.

**diplomate** means a Qualified scientist who has completed the requirements for the award of an institute of technology diploma qualifying a person in accordance with the Academic Schedule

[Definition of **employee** substituted by [PR997772](#) from 01Jan10]

**employee** means national system employee within the meaning of the Act

[Definition of **employer** substituted by [PR997772](#) from 01Jan10]

**employer** means national system employer within the meaning of the Act

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

**in-service training** means the formal and/or informal work-related learning activities undertaken by a technology based graduate through opportunities provided by the employer, which contribute to professional development and efficiency. This includes supervised and unsupervised work experience to increase the breadth and/or

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depth of knowledge and the skills acquired by the graduate in specific areas of professional practice.

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

[Definition of **on-hire** inserted by [PR994537](#) from 01Jan10]

**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

**supervision** means the oversight, direction, instruction, guidance and/or support provided to a graduate by the experienced professional responsible for ensuring the graduate is not placed in situations where required to function beyond their competence

[Definition of **transitional minimum wage instrument** inserted by [PR994537](#) from 01Jan10]

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

### 3.2 Engineering stream

**Experienced engineer** means a Professional engineer with the undermentioned qualifications engaged in any particular employment where the adequate discharge of any portion of the duties requires qualifications of the employee as (or at least equal to those of) a member of Engineers Australia. The qualifications are as follows:

- (a) membership of Engineers Australia; or
- (b) having graduated in a four or five year course at a university recognised by Engineers Australia, four years' experience on professional engineering duties since becoming a Qualified engineer; or
- (c) not having so graduated, five years of such experience.

**Graduate engineer** means a person who is the holder of a university degree (four or five year course) recognised by Engineers Australia or is the holder of a degree, diploma or other testamur which:

- (a) has been issued by a technical university, an institute of technology, a European technical high school (technische hochschule) or polytechnic or other similar educational establishment; and
- (b) is recognised by Engineers Australia as attaining a standard similar to a university degree; and has been issued following:
  - (i) a course of not less than four years duration for a full-time course after a standard of secondary education not less than the standard of examination for matriculation to an Australian university; or
  - (ii) a part-time course of sufficient duration to obtain a similar standard as a four year full-time course after a similar standard of secondary education.

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**Professional engineer** means a person qualified to carry out professional engineering duties as defined. The term Professional engineer will embrace and include Graduate engineer and Experienced engineer as defined in this clause.

**professional engineering duties** means duties carried out by a person in any particular employment, the adequate discharge of any portion of which duties requires qualifications of the employee as (or at least equal to those of) a graduate member of Engineers Australia

### 3.3 Information technology and telecommunications services stream

**information technology industry** means:

- (a) the design and manufacture of computers and computer peripherals;
- (b) the design and manufacture of telecommunications equipment;
- (c) the design and manufacture of computer software;
- (d) computer system installation, repair and maintenance;
- (e) computer consultancy services;
- (f) computer programming;
- (g) system analysis services;
- (h) the design, development and maintenance of online internet architecture and the facilitation of online content management; or
- (i) activities which are incidental, ancillary or complementary to the activities set out in this definition.

**Experienced information technology employee** means a professional information technology employee with the undermentioned qualifications in any particular employment the adequate discharge of any portion of the duties of which employment requires:

- (a) that they have graduated with a university degree, with a science or information technology major (three, four or five year course) and had four years' experience on professional information technology duties since graduating; or
- (b) that they, not having so graduated, have sufficient qualifications and experience to be eligible for admission as a member of the Australian Computer Society plus a further four years' experience on professional information technology duties.

**Graduate information technology employee** means a person who:

- (a) holds a university degree with a science or information technology major (three, four or five year course) accredited by the Australian Computer Society at professional level; or
- (b) has sufficient qualifications and experience to be eligible for admission as a member of the Australian Computer Society.

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**professional information technology duties** means duties carried out by a person in any particular employment the adequate discharge of any portion of which duties requires a person to:

- (a) hold a university degree with a science or information technology major (three, four or five year course) accredited by the Australian Computer Society at professional level; or
- (b) have sufficient qualifications and experience to be eligible for admission as a member of the Australian Computer Society.

**Professional information technology employee** means an adult person qualified to carry out professional information technology duties as defined. The term Professional information technology employee will embrace and include Graduate information technology employee and Experienced information technology employee as defined.

**telecommunications service** means a service for carrying communications by means of guided or unguided electromagnetic energy or both

**telecommunications services industry** means:

- (a) the supply and/or installation and/or maintenance of telecommunications services; or
- (b) the supply and/or installation and/or maintenance of value added telecommunications services; or
- (c) incidental, ancillary or complementary to the supply and/or installation and/or maintenance of telecommunications services; or
- (d) the installation and/or maintenance of telecommunications equipment and line.

### 3.4 Scientist Stream

**Experienced scientist** means a Professional scientist possessing the following qualifications and engaged in any particular employment, the adequate discharge of any portion of the duties of which, requires the possession of such qualifications.

The qualifications are:

- (a) that they will have had further experience on professional scientific duties, after obtaining their degree or diploma, as follows:
  - (i) when a graduate (four or five year course) – four years' experience;
  - (ii) when a graduate (three year course) – five years' experience, or
- (b) that they possess qualifications acceptable to:
  - (i) the Royal Australian Chemical Institute for admission to the grade of Associate member; or
  - (ii) the Australian Institute of Physics for admission to the grade of member; or

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- (iii) the Australasian Institute of Mining and Metallurgy for admission to the grade of Associate member; or
- (iv) the Australian Institute of Food Science and Technology for admission to the grade of Associate member.

**Professional scientist** means a person qualified to carry out professional scientific duties as defined. The term Professional scientist will embrace and include Qualified scientist and Experienced scientist as defined.

**professional scientific duties** means duties carried out by a person in any particular employment, the adequate discharge of any portion of which duties requires academic qualifications of the employee as specified in the academic schedule below:

[Academic schedule inserted by [PR994537](#) from 01Jan10]

### Academic schedule

- (a) A degree in science from an Australian, New Zealand or United Kingdom university or from an Australian tertiary educational institution.
- (b) Academic qualifications acceptable to the Royal Australian Chemical Institute for admission to the grade of corporate membership.
- (c) Academic qualifications acceptable to The Australian Institute of Physics for admission to the grades of graduate membership or corporate membership.
- (d) Academic qualifications in metallurgy, metallurgical engineering or technology acceptable to either the Australasian Institute of Mining and Metallurgy for admission to the grade of junior or corporate membership, or the Institution of Metallurgists (London) for admission to the grades of graduate or associate membership.
- (e) Academic qualifications acceptable to the Australian Institute of Agricultural Science for admission to the grade of corporate membership.
- (f) Academic qualifications acceptable to the Australian Institute of Food Science and Technology for admission to the grades of graduate or corporate membership.
- (g) Academic qualifications acceptable to a pharmacy board or council within the Commonwealth of Australia provided that the award will not apply to pharmacists employed in a retail pharmacy shop.

[3.4(c) deleted by [PR994537](#) from 01Jan10]

**3.5 Qualified scientist** means a Professional scientist other than an Experienced scientist as defined, that is, a person possessing academic qualifications as specified in the academic schedule

### 3.6 Quality auditing stream

**quality auditing industry** means that industry the participants in which provide advisory, auditing and assessment services to companies which are pursuing quality



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improvement programs (in compliance with the International Standards Organisations quality standards)

**quality auditor/senior (lead) quality auditor** means for the purposes of this award the classifications as outlined in Schedule B—Classification Structure and Definitions

**Quality auditing** means the duties carried out by a person in any particular employment within the quality auditing industry, the adequate discharge of any portion of which duties requires qualifications.

The educational qualifications and experiences are as follows:

### **Educational requirements**

- (a) Auditors will have successfully completed a course of study, after completing secondary education, involving a minimum of 600 hours direct contact and leading to an award from a recognised body, college or university. Equivalent distance learning courses or corporate/professional membership of a recognised professional institution will also be recognised.
- (b) In all cases, documentary evidence of the educational standard claimed will be required. Copies of degrees or certificates will be required as objective evidence to satisfy the educational requirement. Verification of the awards will be as follows:
  - (i) originals (which are to be returned after sighting by an officer of the auditor certification body);
  - (ii) photocopies which have been signed as verified by one of the applicant's sponsors; or
  - (iii) a letter from the qualifying authority, e.g. university or college, confirming the award made.
- (c) As an alternative, auditors may be considered for certification if they can demonstrate eight years full-time work experience and satisfy the auditor certification body they have achieved a satisfactory educational standard including communication oral and written skills necessary to conduct and/or manage audits.

### **Experience requirement**

Auditors will have a minimum of two years' relevant experience in the implementation and/or application of quality management systems which provides the practical knowledge necessary to effectively audit such systems. The quality management system experience required may be concurrent with work experience, but must have been achieved in the six years prior to initial certification.

### **Auditing experience requirement**

- (a) All levels of auditor will maintain an audit log in order to demonstrate that their auditing experience was gained under the prescribed conditions and within the required time frame.

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- (b) For all levels of auditor, only independent audits satisfy the auditing experience requirements. The auditor and the auditor's organisation will have independent management and operating structure from the audited organisation. Examples of acceptable relationships are:
- (i) a head office audit of a plant or division;
  - (ii) one division of plant auditing another division or plant;
  - (iii) a customer organisation auditing a supplier;
  - (iv) a third party certification audit; or
  - (v) a consultant contracted to provide an independent audit.

3.7 Where this award refers to a condition of employment provided for in the NES, the NES definition applies.

## 4. Coverage

[Varied by [PR992791](#), [PR994537](#)]

4.1 This award covers employers throughout Australia with respect to their employees performing professional engineering and professional scientific duties who are covered by the classifications in Schedule B—Classification Structure and Definitions of the award and those employees.

4.2 This award covers employers throughout Australia principally engaged in the information technology industry, the quality auditing industry or the telecommunications services industry and their employees who are covered by the classifications in Schedule B.

[4.3 varied by [PR992791](#) from 22Jan10]

4.3 The award does not cover employees who are covered by the following awards:

- (a) *Airport Employees Award 2010*;
- (b) *Black Coal Mining Industry Award 2010*;
- (c) *Electrical Power Industry Award 2010*;
- (d) *Port Authorities Award 2010*;
- (e) *Rail Industry Award 2010*;
- (f) *State Government Agencies Administration Award 2010*; and
- (g) *Water Industry Award 2010*.

4.4 The award does not cover employees of a local government covered by another award.

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

4.6 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*

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*Provisions and Consequential Amendments) Act 2009 (Cth)), or employers in relation to those employees.*

[New 4.7, 4.8 and 4.9 inserted by [PR994537](#) from 01Jan10]

- 4.7** 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.
- 4.8** This award covers any employer which supplies labour on an on-hire basis in the industries set out in clauses 4.1 and 4.2 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 those industries. This subclause operates subject to the exclusions from coverage in this award.
- 4.9** This award covers any employer which supplies on-hire employees in classifications set out in Schedule B and those on-hire employees, if the employer is not covered by another modern award containing a classification which is more appropriate to the work performed by the employee. This subclause operates subject to the exclusions from coverage in this award.

[4.7 renumbered as 4.10 by [PR994537](#) from 01Jan10]

- 4.10** Where an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work.

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

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

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

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

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

## **7. Award flexibility**

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

- (a) arrangements for when work is performed;

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- (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.

## 8. Facilitative provision

8.1 This award contains facilitative provisions which allow agreement between an employer and/or majority of employees on how the award provisions are to apply at the workplace or enterprise level.

8.2 The following lists the facilitative provisions and the level of agreement required:

Clause	Subject matter
18.1	Ordinary hours of duty work rostered, by individual agreement
22.2(a)	Public holidays, by majority agreement
22.2(b)	Public holidays, by individual agreement

8.3 Agreements made pursuant to clause 8.2 must be recorded in writing and be available to every affected employee on request.

8.4 Facilitative provisions are not to be used as a device to avoid award obligations nor should they result in unfairness to an employee or employees covered by this award.

## 9. Consultation regarding major workplace change

### 9.1 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.

### 9.2 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 9.1, 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 9.1.
- (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.

## **10. Dispute resolution**

- 10.1** 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.
- 10.2** 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 10.1 have been taken, a party to the dispute may refer the dispute to Fair Work Australia.
- 10.3** The parties may agree on the process to be utilised by Fair Work Australia including mediation, conciliation and consent arbitration.
- 10.4** 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.
- 10.5** An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.
- 10.6** 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 2—Types of Employment and Termination of Employment**

### **11. Types of employment**

#### **11.1 Contract of employment**

Employment may be full-time, part-time or casual.

**11.2 Full-time employment**

Any person 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.

**11.3 Part-time employment**

- (a) An employee may be engaged for a specified number of ordinary hours each week being less than those hours prescribed in clause 18—Ordinary hours of work and rostering.
- (b) Such an employee will be paid pro rata the appropriate annual rate for the classification prescribed in clause 15—Minimum wages and will receive other conditions under this award at the same pro rata rate.
- (c) Any employee engaged on a full-time basis will not be converted to a part-time basis as set out in this clause without the employee's written agreement.

**11.4 Casual employment**

- (a) An employee may be engaged as a casual and must be paid an hourly rate calculated by converting the appropriate annual rate for the classification prescribed in clause 15 to an hourly rate and adding a loading of 25%.
- (b) Such loading is paid to compensate such casual employees for lack of continuity in employment, paid leave, termination and other employment benefits of a full-time or part-time employee.

**11.5 Notification of conditions of employment**

Employees engaged or employed by an employer covered by this award must be advised in writing by the employer of the conditions under which the employee is to be employed.

**11.6 Notification of responsibility level**

An employee must on appointment and/or upon request be informed by their employer of the responsibility level as described in Schedule B—Classification Structure and Definitions which the employer considers relevant to the employee's employment having regard to the duties performed by the employee concerned.

**11.7 Evidence of qualifications**

- (a) An employee who is employed under this award or who is an applicant for employment covered by this award, must if and when required to do so by the employer, produce to the employer written evidence that they possess or have acquired the qualifications of a Qualified engineer, Experienced engineer, Qualified scientist, Experienced scientist, Graduate information technology employee or Experienced information technology employee.
- (b) Where an employee has failed to produce to the employer written evidence that they possess or have acquired the relevant qualifications and the employee subsequently claims to be entitled to payment at a rate prescribed by this award, it will be a defence to the employer if the employer establishes that during the said period the employer did not know and had no reason to believe that the employee had acquired the qualifications of a Qualified engineer,

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Experienced engineer, Qualified scientist, Experienced scientist, Graduate information technology employee or Experienced information technology employee.

### 11.8 Professional development

- (a) It is understood and accepted that it is the responsibility of the employees to keep themselves informed of developments in their profession and to develop their professional knowledge and ability, and that it is appropriate for employees to be encouraged to undertake self-development programs.
- (b) Where the employee and the employer agree that an activity be undertaken by the employee as a component of a structured training program, the employer will meet all costs associated with the training.

## 12. Termination of employment

### 12.1 Notice of termination is provided for in the NES.

12.2 Instead of s.117(3)(a) of the Act, in order to terminate the employment of an employee the employer must give the employee one month's notice.

### 12.3 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.

### 12.4 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.

## 13. Redundancy

[Varied by [PR994537](#)]

13.1 Redundancy pay is provided for in the NES.

### 13.2 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.



### **13.3 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.

### **13.4 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 12.4.

### **13.5 Transitional provisions**

- (a) Subject to clause 13.5(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:

[13.5(a)(i) substituted by [PR994537](#) from 01Jan10]

- (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 13.5 ceases to operate on 31 December 2014.

## **Part 3—Minimum Wages and Related Matters**

### **14. Classifications**

The classification definitions in Schedule B—Classification Structure and Definitions will apply.

**15. Minimum wages**

[15 varied by [PR997943](#) ppc 01Jul10]

The minimum annual wages payable to full-time employees in the classifications defined in Schedule B—Classification Structure and Definitions are:

<b>Classification</b>	<b>Annual wages</b>
	<b>\$</b>
Level 1 Graduate professional	
Pay point 1.1 (3 year degree)	39,625
Pay point 1.1 (4 or 5 year degree)	40,640
Pay point 1.2	41,323
Pay point 1.3	43,042
Pay point 1.4	45,222
Level 2 Experienced professional/quality auditor	46,746
Level 3 Professional/senior (lead) quality auditor	51,088
Level 4 Professional	57,619

**16. Allowances**

[Varied by [PR994537](#)]

**16.1 Travelling expenses and travelling time**

An employee will be reimbursed all reasonable expenses (including accommodation, meals and out-of-pocket expenses directly related to their employment) incurred while travelling on their employer’s business. Reasonable compensation for excess travel time will be agreed upon.

**16.2 Vehicle allowance**

In cases where it is mutually agreed that an employee will be required to use their private vehicle on the employer’s business, the employee will be paid reasonable compensation, but in no case will the employee receive payment at a rate less than \$0.74 cents per kilometre travelled.

**16.3 Equipment and special clothing**

Except where an employee elects to provide equipment and special clothing, the employer will provide free of cost, all such equipment and special clothing reasonably required for the adequate discharge of duties. Such equipment or clothing will remain the property of the employer.

## 16.4 Adjustment of expense related allowances

[16.4(a) substituted by [PR994537](#) from 01Jan10]

- (a) At the time of any adjustment to wages as a result of an annual wage review, 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:

<b>Allowance</b>	<b>Applicable Consumer Price Index figure</b>
Vehicle allowance	Private motoring sub-group

## 17. Superannuation

[Varied by [PR994537](#)]

### 17.1 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.

### 17.2 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.

### 17.3 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 17.2.
- (b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.

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- (c) The employer must pay the amount authorised under clauses 17.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 17.3(a) or (b) was made.

### 17.4 Superannuation fund

[17.4 varied by [PR994537](#) from 01Jan10]

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 17.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 17.2 and pay the amount authorised under clauses 17.3(a) or (b) to one of the following superannuation funds or its successor:

- (a) AustralianSuper;
- (b) Tasplan;
- (c) Statewide Superannuation Trust; or
- (d) 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.

## Part 4—Hours of Work and Related Matters

### 18. Ordinary hours of work and rostering

**18.1** For the purpose of the NES, ordinary hours of work under this award are 38 per week. An employee who by agreement with their employer is working a regular cycle (including shorter or longer hours) must not have ordinary hours of duty which exceed an average of 38 hours per week over the cycle.

#### 18.2 Employers will compensate for:

- (a) time worked regularly in excess of ordinary hours of duty;
- (b) time worked on call-backs;
- (c) time spent standing by in readiness for a call-back;
- (d) time spent carrying out professional engineering duties or professional scientific/information technology duties outside of the ordinary hours of duty over the telephone or via remote access arrangements; or
- (e) time worked on afternoon, night or weekend shifts.

#### 18.3 Compensation may include:

- (a) granting special additional leave;
- (b) granting special additional remuneration;
- (c) taking this factor into account in the fixation of annual remuneration; or

- (d) granting a special allowance or loading.

Provided that, where relevant, such compensation or remuneration will include consideration of the penalty rate or equivalent and the conditions as applicable from time to time to the majority of employees employed in a particular establishment in which the employee is employed.

- 18.4** The compensation and/or remuneration will be reviewed annually to ensure that it is set at an appropriate level having regard to the factors listed in this clause.

**18.5 Transfers**

Where an employee is transferred permanently from day work to shiftwork or from shiftwork to day work, such employee should receive at least one month's notice. However, the employer and the employee may agree on a lesser period of notice.

## Part 5—Leave and Public Holidays

### 19. Annual leave

- 19.1** Annual leave is provided for in the NES.

- 19.2** An employee must be paid a loading calculated at the rate of 17.5% of their base rate of pay, provided that:

- (a) In no case will there be an entitlement to an amount in excess of the ABS average weekly earnings for all males (Australia) for the preceding September quarter of the year preceding the year in which the date of the accrual of the annual leave falls.
- (b) Where an employee is in receipt of remuneration from their employer which is related to their annual leave loading and which is established as being of equivalent value to or greater value than the loading provided by this clause, no further entitlement will accrue. Where the benefit is of a lesser value than equivalent value then the employer must make up the benefit to that value.

### 19.3 Definition of shiftworker

- (a) For the purpose of the additional week of annual leave provided for in the NES, a **shiftworker** is a seven day shiftworker who is regularly rostered to work on Sundays and public holidays.
- (b) Where an employee with 12 months' continuous service is engaged for part of the 12 monthly period as a seven day shiftworker, the employee must have their annual leave increased by half a day for each month the employee is continuously engaged as a seven day shiftworker.

### 19.4 Annual close-down

Where an employer closes down the enterprise, or a section or sections thereof, for the purposes of allowing annual leave to all or the majority of employees in the enterprise, section, or sections concerned, the same conditions which apply to the

other employees of the enterprise, section or sections may also apply to employees covered by this award.

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

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

## **21. Community service leave**

Community service leave is provided for in the NES.

## **22. Public holidays**

[Varied by [PR994537](#)]

**22.1** Public holidays are provided for in the NES.

### **22.2 Substitution of public holidays by agreement at the enterprise**

#### **(a) Substitution of public holidays by majority agreement**

[22.2(a) varied by [PR994537](#) from 01Jan10]

An employer and its employees may agree to substitute another day for any of the prescribed days in this clause. For this purpose, the consent of the majority of the affected employees will constitute agreement.

#### **(b) Substitution of public holidays by individual agreement**

An employer and 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 enterprise or relevant section or sections of it.

## **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.

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**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.

**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.



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**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.

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**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 and Definitions**

For employment involving the performance of professional duties, the following classification definitions apply:

### **B.1 Professional responsibility levels**

#### **B.1.1 Level 1—Graduate professional engineer, Professional scientist and Information technology employee**

- (a) An employee at this level undertakes initial professional tasks of limited scope and complexity, such as minor phases of broader assignments, in office, plant, field or laboratory work.
- (b) Under supervision from higher level Professional engineers, Professional scientists or Professional information technology employees as to method of approach and requirements, the employee performs normal professional work and exercises individual judgment and initiative in the application of principles, techniques and methods.
- (c) In assisting more senior Professional engineers, Professional scientists or Professional information technology employees by carrying out tasks requiring accuracy and adherence to prescribed methods of professional engineering or professional scientific/information technology analysis, design or computation, the employee draws upon advanced techniques and methods learned during and after the undergraduate course.
- (d) Training, development and experience using a variety of standard procedures, enable the employee to develop increasing professional judgment and apply it progressively to more difficult tasks at Level 2.
- (e) Decisions are related to tasks performed, relying upon precedent or defined procedures for guidance. Recommendations are related to solution of problems in connection to the tasks performed.
- (f) Work is reviewed by higher level Professional engineers, Professional scientists or Professional information technology employees for validity, adequacy, methods and procedures. With professional development and experience, work receives less review, and the employee progressively exercises more individual judgment until the level of competence at Level 2 is achieved.
- (g) The employee may assign and check work of technical staff assigned to work on a common project.

#### **B.1.2 Graduate professional—appointment and progression**

##### **(a) Pay Point 1.1**

Means the pay point to which a graduate will be appointed where they possess and may be required to utilise a level of professional skill and knowledge based on either the completion of an accredited three or four year tertiary professional technology based qualification in Australia or equivalent.

**(b) Pay Point 1.2**

Means the pay point to which a graduate will be appointed or will progress from Pay Point 1.1 having been assessed as being competent at Pay Point 1.1, where the graduate possesses and may be required to utilise a level of professional skill and knowledge based on:

**(i) Training and experience**

In addition to the experience, skill and knowledge requirements for Pay Point 1.1 not more than one further year of practical professional experience, with supervision as appropriate, and the undertaking of in-service training, subject to its provision by the employer.

**(ii) Core competency standards**

The development of core competency standards in the practice setting/s undertaken since being assessed as competent at Pay Point 1.1 measured against the prescribed performance criteria.

**(c) Pay Point 1.3**

Means the pay point to which a graduate will be appointed or will progress from Pay Point 1.2 having been assessed as being competent at this Pay Point, where the graduate possesses and may be required to utilise a level of professional skill and knowledge based on:

**(i) Training and experience**

In addition to the experience, skill and knowledge requirements for Pay Point 1.2, not more than one further year of practical professional experience, with supervision as appropriate, and the undertaking of in-service training, subject to its provision by the employer.

**(ii) Core competency standards**

In addition to the core competency standards developed at Pay Point 1.2, the further development of core competency standards in the practice setting/s undertaken since being assessed as competent at Pay Point 1.2 measured against the prescribed performance criteria.

**(d) Pay Point 1.4**

Means the pay point to which a graduate will be appointed or will progress from Pay Point 1.3 having been assessed as being competent at this Pay Point, where the graduate possesses and may be required to utilise a level of professional skill and knowledge based on:

**(i) Training and experience**

In addition to the experience, skill and knowledge requirements for Pay Point 1.3, not more than one further year of practical professional experience, with supervision as appropriate, and the undertaking of in-service training, subject to its provision by the employer.

**(ii) Core competency standards**

In addition to the core competency standards developed at Pay Point 1.3, the further development of core competency standards in the practice setting/s undertaken since being assessed as competent at Pay Point 1.3 measured against the prescribed performance criteria.

**B.1.3 Annual review**

Subject to the requirements of each Pay Point, each graduate will progress on their annual anniversary date from one Pay Point to the next, having regard to the acquisition and utilisation of core competencies through experience in their practice setting/s over such period. Confirmation of the employee's progression to the next Pay Point will be provided by the employer in writing.

**B.1.4 Deferral**

Progression from one Pay Point to the next may be deferred or refused by the employer. Such deferral or refusal of progression will not be unreasonably or arbitrarily imposed by the employer. Any decision to defer or refuse progression to the next pay point will be confirmed in writing.

**B.1.5 Appeal and review**

An employee may appeal a deferral, provided that where any such appeal results in a revocation of the employer's decision, Pay Point progression will be deemed to operate and be payable from the employee's anniversary date for such progression. An appeal or review, for the purpose of this clause, will be undertaken and resolved in accordance with clause 10—Dispute resolution of this award.

**B.1.6 Accelerated advancement**

Progression from one Pay Point to the next may be advanced by the employer to occur prior to the annual anniversary date provided that any such advancement is referable to the requirements for each Pay Point.

**B.1.7 Level 2—Experienced professional**

Following development, the Experienced professional plans and conducts professional work without detailed supervision but with guidance on unusual features and is usually engaged on more responsible assignments requiring substantial professional experience.

**B.1.8 Quality auditor**

A candidate has satisfied the criteria and has demonstrated the ability to perform all or any part of a quality management system audit, solo, or as a member of a team to ISO 10011 Part 2, AS 3911 Part 2, NZS 10011 Part 2.

**B.1.9 Level 3—Professional**

- (a) An employee at this level performs duties requiring the application of mature professional knowledge. With scope for individual accomplishment and coordination of more difficult assignments, the employee deals with problems for which it is necessary to modify established guides and devise new approaches.
- (b) The employee may make some original contribution or apply new professional approaches and techniques to the design or development of equipment or products.
- (c) Recommendations may be reviewed for soundness of judgement but are usually regarded as technically accurate and feasible. The employee makes responsible decisions on matters assigned, including the establishment of professional standards and procedures. The employee consults, recommends and advises in specialty areas.
- (d) Work is carried out within broad guidelines requiring conformity with overall objectives, relative priorities and necessary cooperation with other units. Informed professional guidance may be available.
- (e) The employee outlines and assigns work, reviews it for technical accuracy and adequacy, and may plan, direct, coordinate and supervise the work of other professional and technical staff.

**B.1.10 Senior (lead) auditor**

A candidate has satisfied the criteria and has demonstrated the ability to manage an audit team and co-ordinate all aspects of a complete quality management system audit to ISO 10011 Part 2, AS 3911 Part 2, NZS 10011 Part 2.

**B.1.11 Level 4—Professional**

- (a) An employee at this level performs professional work involving considerable independence in approach, demanding a considerable degree of originality, ingenuity and judgement, and knowledge of more than one field of, or expertise (for example, acts as their organisation's technical reference authority) in a particular field of professional engineering, professional scientific/information technology field or professional information technology field.
- (b) An employee at this level:
  - (i) initiates or participates in short or long range planning and makes independent decisions on professional engineering or professional scientific/information technology policies and procedures within an overall program;
  - (ii) gives technical advice to management and operating departments;
  - (iii) may take detailed technical responsibility for product development and provision of specialised professional engineering or professional scientific/information technology systems, facilities and functions;
  - (iv) coordinates work programs; and

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- (v) directs or advises on the use of equipment and materials.
- (c) An employee at this level makes responsible decisions not usually subject to technical review, decides courses of action necessary to expedite the successful accomplishment of assigned projects, and may make recommendations involving large sums or long range objectives.
- (d) Duties are assigned only in terms of broad objectives, and are reviewed for policy, soundness of approach, accomplishment and general effectiveness.
- (e) The employee supervises a group or groups including professionals and other staff, or exercises authority and technical control over a group of professional staff. In both instances, the employee is engaged in complex professional engineering or professional scientific/information technology applications.