

The Exposure Draft was first published on 18 December 2015. Subsequent amendments to the draft are as follows:

Publication date	Reason for amendments	Clauses affected
29 April 2016	Incorporates changes agreed by the parties at the conference on 21 April 2016	8.4, 9.2, A.2.2(b)(xi), B.3.1, B.3.2
	<a href="#">Exposure draft</a>	
11 July 2017	Incorporates changes resulting from <a href="#">[2017] FWCFB 3543</a>	8, 9, Schedule B
	Incorporates changes resulting from <a href="#">[2017] FWCFB 3433</a>	1, 13, Schedule G
	Incorporates changes resulting from <a href="#">[2017] FWCFB 3541</a>	5
	Incorporates changes resulting from <a href="#">[2017] FWCFB 3500</a> , <a href="#">PR592208</a> , <a href="#">PR592689</a> , <a href="#">PR593879</a>	8, Schedule B, Schedule C, Schedule D, Schedule E
	Incorporates changes resulting from <a href="#">PR580863</a>	Schedule F
	Incorporates changes resulting from <a href="#">[2016] FWCFB 3500</a> , <a href="#">PR579896</a> , <a href="#">PR551814</a> , <a href="#">PR581528</a>	8, Schedule B, Schedule C, Schedule D, Schedule E
	Incorporates changes resulting from <a href="#">PR583056</a>	13, Schedule H, Schedule I
	Incorporates changes resulting from <a href="#">PR584150</a>	12.2, Schedule J
	<a href="#">Exposure Draft</a>	
17 January 2018	Incorporates change resulting from <a href="#">PR583056</a>	13.11(a)
	Incorporates changes resulting from <a href="#">PR598110</a>	Schedule F
	Incorporates change resulting from recent conferences and the provisional views discussed in <a href="#">[2017] FWCFB 3543</a> and <a href="#">[2018] FWCFB 354</a>	6.1, 8.1, 8.3, 9.2, 9.4, 9.6, 9.7, 10.2, 10.5, 10.7, Schedule A, Schedule B, Schedule C
29 January 2018	Incorporates change resulting from <a href="#">[2018] FWCFB 354</a> (correction order <a href="#">PR599877</a> )	8.1
Changes agreed to by parties appear in red text. Underlined text indicates new text that is to be included. Strikethrough text indicates existing text that is to be deleted.		

# EXPOSURE DRAFT

## Real Estate Industry Award 2015

This exposure draft has been prepared by staff of the Fair Work Commission based on the *Real Estate Industry Award 2010* (the Real Estate award) as at 18 December 2015. This exposure draft does not seek to amend any entitlements under the Real Estate award but has been prepared to address some of the structural issues identified in modern awards.

The review of this award in accordance with s.156 of the *Fair Work Act 2009* is being dealt with in matter [AM2014/242](#). Additionally a number of common issues are being dealt with by the Commission which may affect this award. Transitional provisions have not been included in this exposure draft pending the outcome of the review.

This draft does not represent the concluded view of the Commission in this matter.

No examples have been included in this exposure draft. Parties are asked to submit [examples](#) that clarify the operation of particular provisions.

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## Part 1—Application and Operation

### 1. Title and commencement

- 1.1 This award is the *Real Estate Industry Award 2015*.
- 1.2 This modern award commenced operation on 1 January 2010. The terms of the award have been varied since that date.
- 1.3 A variation to this award does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the award as it existed prior to that variation.
- 1.4 Schedule G—Definitions sets out definitions that apply in this award.
- 1.5 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, the Fair Work Commission may make any order it considers appropriate to remedy the situation.

### 2. The National Employment Standards and this award

- 2.1 The [National Employment Standards](#) (NES) and this award contain the minimum conditions of employment for employees covered by this award.
- 2.2 Where this award refers to a condition of employment provided for in the NES, the NES definition applies.
- 2.3 The employer must ensure that copies of the award and the NES are available to all employees to whom they apply, either on a notice board which is conveniently located at or near the workplace or through accessible electronic means.

### 3. Coverage

- 3.1 This industry award covers employers in Australia engaged in the real estate industry in respect to their employees engaged in classifications in clause 8—Minimum wages to the exclusion of any other modern award.
- 3.2 **Real estate industry** means the provisions of services associated with sales, acquisitions, leasing and/or management of residential, commercial, retail, industrial, recreational, hotel, retirement and any other leasehold or real property and/or businesses. These services include:
- (a) real estate agency;
  - (b) business and hotel broking;
  - (c) strata and community title management (or similar service however described);

- (d) stock and station agency;
- (e) buyers agency; and
- (f) real estate valuation.

**3.3** This award covers any employer which supplies labour on an on-hire basis in the industry set out in clauses 3.1 and 3.2 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 that industry. This subclause operates subject to the exclusions from coverage in this award.

**3.4** This award covers employers which provide group training services for trainees engaged in the industry and/or parts of industry set out in clause 3.1 and 3.2 and those 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.

**3.5** The award does not cover:

- (a) an employee excluded from award coverage by the Act;
- (b) 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; or
- (c) 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.

**3.6** 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.

## **4. Award flexibility**

**4.1** 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.

**4.2** The employer and the individual employee must have genuinely made the agreement without coercion or duress. An agreement under this clause can only be entered into after the individual employee has commenced employment with the employer.

**4.3** 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 4.1; and
- (b) result in the employee being better off overall at the time the agreement is made than the employee would have been if no individual flexibility agreement had been agreed to.

**4.4** 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.

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

**4.6** Except as provided in clause 4.4(a) the agreement must not require the approval or consent of a person other than the employer and the individual employee.

**4.7** 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.

**4.8** The agreement may be terminated:

- (a) by the employer or the individual employee giving 13 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.

NOTE: If any of the requirements of [s.144\(4\)](#), which are reflected in the requirements of this clause, are not met then the agreement may be terminated by either the employee or the employer, giving written notice of not more than 28 days (see [s.145](#) of the Act).

- 4.9** The notice provisions in clause 4.8(a) only apply to an agreement entered into from the first full pay period commencing on or after 4 December 2013. An agreement entered into before that date may be terminated in accordance with clause 4.8(a), subject to four weeks' notice of termination.
- 4.10** 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—Types of Employment and Classifications

### 5. Types of employment

**5.1** At the time of engagement, the employer must advise the employee in writing of the terms and conditions of their employment, including whether the employee is engaged as a full-time, part-time or casual employee.

#### 5.2 Full-time employees

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

#### 5.3 Part-time employees

(a) A part-time employee:

- (i) works less than an average 38 hours per week; and
- (ii) receives, on a pro rata basis, pay and conditions equivalent to those of full-time employees who do the same kind of work.

#### (b) Payment for part-time employment

Part-time employees who are not commission-only employees will be paid no less than 1/38th of the minimum weekly rate of pay for their relevant classification for each ordinary hour worked.

#### 5.4 Casual employees

Casual employment provisions may be affected by [AM2014/197](#).

- (a) A casual employee is engaged and paid as a casual employee.
- (b) The minimum engagement for a casual employee is three hours.
- (c) **Casual loading**
  - (i) For each minimum hour worked, a casual employee must be paid:
    - the minimum hourly rate; and

- a loading of **25%** of the minimum hourly rate,  
for the classification in which they are employed.
- (ii) The casual loading is paid instead of annual leave, paid personal/carer's leave, notice of termination, redundancy benefits and other entitlements of full-time or part-time employment.
- (iii) The loading constitutes part of the casual employee's all-purpose rate.
- (d) An employee engaged and paid as a casual employee must not be employed on a commission-only basis under clause 9.7.

## **6. Classifications**

- 6.1** Schedule A— to this award contains a definition for each classification in clause 8.1.
- 6.2** At the time of engagement the employer must advise the employee in writing of their classification and also at any time when there is a change to an employee's classification.

## **Part 3—Hours of Work**

### **7. Ordinary hours of work and rostering**

- 7.1** Subject to clause 7.2, ordinary hours of work are 38 hours per week, which may be worked on any day of the week.

#### **7.2 Averaging of hours of work**

Hours of work may be averaged over an eight week period. The average weekly hours over the period must not exceed:

- (a) for a full-time employee—38 hours; or
- (b) for an employee who is not a full-time employee—the lesser of:
  - (i) 38 hours; and
  - (ii) the employee's ordinary hours of work in a week.

#### **7.3 Rostered time off**

- (a) An employee, other than a casual, will be allowed either one and a half or two rostered days free of duty each week.
- (b) Rostered time off may be taken in one of the following ways:
  - (i) one consecutive period;
  - (ii) two periods; or
  - (iii) three periods comprising one day and two half days.



**7.4 Unpaid meal break**

- (a) No employee will be required to work more than five hours without an unpaid meal break of at least 30 minutes duration.
- (b) If the employee’s rostered hours are not longer than six hours the employee may elect, with the employer’s approval, to not take a meal break.
- (c) Meal breaks are not treated as time worked.

**Part 4—Wages and Allowances**

**8. Minimum wages**

A new classification structure has been proposed by the parties as a consequence of the provisions decision of the Full Bench in [\[2017\] FWCFB 3543](#). Classification definitions are set out in Schedule A. The wage increases in the structure are proposed to operate from Monday 2 April 2018.

**8.1** An employer must pay adult employees the following minimum wages for ordinary hours worked by the employee:

<u>Employee classification</u>	<u>Minimum weekly rate</u> \$
<u>Real Estate Employee Level 1 (Associate Level)— first 12 months of employment at this level</u>	<u>728.20</u>
<u>Real Estate Employee Level 1 (Associate Level)— after first 12 months of employment at this level</u>	<u>768.60</u>
<u>Real Estate Employee Level 2 (Representative Level)</u>	<u>809.10</u>
<u>Real Estate Employee Level 3 (Supervisory Level)</u>	<u>849.60</u> <u>890.00</u>
<u>Real Estate Employee Level 4 (In-Charge Level)</u>	<u>890.00</u> <u>930.50</u>

<b>Employee classification</b>	<b>Minimum weekly rate</b>	<b>Minimum hourly rate</b>
	\$	\$
<del>Property Sales Associate—first six months of employment at this classification</del>	<del>694.90</del>	<del>18.29</del>
<del>Property Sales Associate—after six months of employment at this classification</del>	<del>719.20</del>	<del>18.93</del>
<del>Property Sales Representative</del>	<del>736.70</del>	<del>19.39</del>

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<b>Employee classification</b>	<b>Minimum weekly rate</b>	<b>Minimum hourly rate</b>
	<b>\$</b>	<b>\$</b>
Property Sales Supervisor	847.40	22.30
Property Management Associate	742.90	19.55
Property Management Representative	785.00	20.66
Property Management Supervisor	901.40	23.72
Strata/Community Title Management Associate	742.90	19.55
Strata/Community Title Management Representative	785.00	20.66
Strata/Community Title Management Supervisor	901.40	23.72

See Schedule B for a summary of hourly rates of pay including overtime and penalties.

**8.2** No employee will suffer a reduction in wages as a result of the introduction of the new classification structure and wage rates.

**8.3** The minimum weekly wage in clause 8.1 is not payable to an employee engaged on a commission-only basis pursuant to clause 9.7.

**8.4 Junior employees**

(a) Where the law permits junior employees to perform the work covered by this award they will be entitled to the percentage of the applicable adult minimum weekly wage for their classification, as set out below:

<b>Age</b>	<b>% of adult rate</b>
<u>Under 19 years</u> <u>At 18 years or less</u>	60
At 19 years	70
At 20 years	80
At 21 years	100

(b) A junior employee must not be employed on a commission-only basis.

**8.5 Payment of wages**

**(a) Frequency of payment**

(i) Wages and allowances will be paid by the employer on a weekly, fortnightly or monthly cycle, except as provided in clause 8.5(b).

(ii) A casual employee will be paid at the end of the employer’s usual pay cycle unless the parties agree to payment being made upon conclusion of the employee’s shift.

NOTE: Regulations 3.33(3) and 3.46(1)(g) of *Fair Work Regulations 2009* set out the requirements for pay records and the content of payslips including the requirement to separately identify any allowance paid.

**(b) Commission, bonus or incentive payments**

- (i) If an employee is entitled to receive any commission, bonus or incentive payment in accordance with a written agreement made under clause 9, payment to the employee must be made within 14 days of the entitlement becoming payable.
  - (ii) The employee’s entitlement to commission, bonus or incentive payment only becomes payable once the employer has received cleared funds from its client for the transaction(s) to which the employee’s entitlement relates.
- (c) Payment may be made by cash, cheque or electronic funds transfer (EFT), at the discretion of the employer.

**8.6 Supported wage system**

For employees who because of the effects of a disability are eligible for a supported wages, see Schedule D—Supported Wage System.

**8.7 National training wage**

Clause 8.6 substituted by [PR593879](#)

- (a) Schedule E to the *Miscellaneous Award 2010* sets out minimum wage rates and conditions for employees undertaking traineeships.
- (b) This award incorporates the terms of Schedule E to the *Miscellaneous Award 2010* as at 1 July 2017. Provided that any reference to “this award” in Schedule E to the *Miscellaneous Award 2010* is to be read as referring to the *Real Estate Industry Award 2010* and not the *Miscellaneous Award 2010*.

**9. Commission, bonus or incentive payments**

Clause 9 has been varied in accordance with the provisional views in a decision by the Full Bench in [AM2016/6 \(\[2017\] FWCFB 3543\)](#).

**9.1 Payment by wages with commission, bonus or incentive payments**

- (a) Where the employer and the employee agree that, in addition to the minimum weekly wage, the employee will be entitled to a portion of the commission paid to the employer, then any method of calculation or any formula for calculating the amount of commission that will be payable to the employee must be evidenced in a written agreement between the employer and the employee.
- (b) Where it has been agreed between the employer and the employee that the employee will be entitled to a bonus or an incentive payment (as opposed to commission under clause 9.1(a)) particulars of the bonus or incentive payment

entitlement must be evidenced in a written agreement between the employer and the employee.

## 9.2 Written agreements generally

- (a) Once a written agreement has been made as provided for in clause 9.1 or clause 9.7, any subsequent agreement to vary the employee’s commission, bonus or incentive payment arrangements must be evidenced in a further written agreement between the employer and the employee.
- (b) Where an employee agrees with the employer to a change in his or her commission, bonus or incentive arrangement, the employee will be entitled to receive sales commission, bonus or incentive payments calculated in accordance with the written agreement (whether made under this clause or clause 9.1) which was in force on the date the contract for sale or lease of property became legally enforceable. Provided that in circumstances where a non-commission-only employee is changing to a commission-only agreement, then the commission-only agreement must not include any provision for a deduction arising from any agreement which was in force immediately prior to the commission-only agreement becoming operative.
- (c) A signed copy of every written agreement regarding commission, bonus or incentive payment arrangements must be provided by the employer to the employee.

## 9.3 Account to employee

The employer must account to the employee in written form for any commission, bonus or incentive payment-based entitlement as it becomes due and payable in accordance with the terms of any written agreement.

## 9.4 Entitlements after employment ends

- (a) Following cessation of employment, the employee is entitled to be credited with a portion of the commission, incentive payments or bonuses calculated in accordance with the terms of the written agreement made pursuant to clauses 9.1 or 9.7 of the Award, but only in the following circumstances:
  - (i) where the employee’s employment is terminated for reason of the employee’s serious misconduct, there was a legally enforceable contract in place for the sale or lease of the property before the cessation date of the employee’s employment; or
  - (ii) where the employee is terminated for any other reason, there was a legally enforceable contract in place for the sale or lease of the property prior to the expiration date of the exclusive agency period.
- (b) For the purpose of this sub-clause, “exclusive agency period” means the period for which the employer has the exclusive right to sell or lease a property under the executed and valid agency agreement that was in effect at the time the employee’s employment ceased. There is no entitlement under this clause where the property for sale or lease has been listed other than on an exclusive agency basis.

- (c) Unless the written agreement made either under clause 9.1 or 9.7 of this Award specifies otherwise, the portion of the commission, incentive payments or bonuses referred to in clause 9.4(a) must be the same as that with which the employee would have been entitled to be credited if their employment had continued.
- (d) Any entitlement to commission, incentive payments or bonuses calculated under clause 9.4 ~~this sub-clause~~ only arises once the employer is paid commission by the client in respect of the sale or lease of the property to which the legally enforceable contract relates and the commission payment is cleared into the employer's bank account.

## 9.5 Disputes

If there is a dispute between the employer and the employee as to whether all or any part of the commission is due to an employee pursuant to clauses 9.1 or 9.7, the matter will be dealt with in accordance with clause 21—Dispute resolution.

## 9.6 Calculation of NES entitlements

- (a) Commission-only employees will be paid for periods of leave to which they are entitled under the NES, at the time the leave is taken, at no less than the employee's base rate of pay. Where an employee is subject to a commission-only agreement which provides for a percentage in excess of the minimum commission-only rate in clause 9.7(f) the payment made for leave may be treated as a debit on the employee's account for this additional percentage.
- (b) Any inclusions as referred to in clause 9.6(a) must be clearly set out in a written agreement.
- (c) The base rate of pay in relation to entitlements under the NES for an employee, who is paid on a commission-only basis, is the minimum wage in clause 8.1 for the employee's classification level.
- (d) The full rate of pay in relation to entitlements under the NES for an employee, who is paid on a commission-only basis, is:
  - (i) the minimum wage in clause 8 for the employee's classification level; or
  - (ii) the employee's average weekly remuneration over the 12 months (or, if the employee has been employed less than 12 months, that period) immediately prior to when the full rate of pay is to be calculated, whichever is the greater.

## 9.7 Commission-only employment

### (a) Agreement to enter into commission-only employment arrangements

An employee engaged in a property sales classification (other than a casual employee) may agree with the employer to be paid on a commission-only basis. Such an employee is considered a pieceworker and is referred to in this award (and within the real estate industry) as a commission-only employee. An employee paid on a commission-only basis must not be engaged as a casual employee.

**(b) Objective of commission-only employment**

The objective of commission-only employment arrangements is to provide a mechanism by which a salesperson who meets the requirements set out below should achieve remuneration of 125% or more of the annualised minimum wage that an employee working in the same property sales classification under this award would be entitled to be paid.

**(c) Minimum requirements for commission-only employment**

**(i)** A person may only enter into an agreement to be a commission-only employee when all of the following conditions have been satisfied:

- the employee and the employer have made a written agreement as provided in clause 9.2 that the employee will be remunerated on a commission-only basis setting out the basis upon which the entitlement to commission will be calculated as provide in clause 9.2;
- the employee has been issued with a real estate agent's license or is registered or permitted to perform the duties of a real estate salesperson under real estate law;
- the employee has been engaged in property sales or commercial, industrial or retail leasing as a Real Estate Employee Level 2 or higher as a Property Sales Representative or a Property Sales Supervisor (with any licensed real estate agent) or was an active licensed real estate agent for at least 12 consecutive months in the 3 years immediately prior to entering into a commission-only agreement;
- the employee is at least 21 years of age;
- the employee is not engaged as a casual, a junior, a Real Estate Employee Level 1 ~~property sales associate~~ or a trainee; and
- for an employee employed on a commission-only basis after 2 April 2018 the employee can establish (with the present or any past employer) that he or she has achieved the Minimum Income Threshold Amount (MITA) prescribed by clause 9.7(d) ~~9.7(e)~~ (as may be amended from time to time). Provided that, the MITA will not have to be achieved in circumstances where the employee has operated his or her own real estate business within the last 3 years.

**(ii)** An employee who qualified to be employed on a commission-only basis under this award prior to 2 April 2018 will continue to be eligible for commission-only employment under the terms of this award as long as the employment with that employer continues, and subject to continuing to meet the MITA as required in clause 9.7(h).

**(d) Minimum income threshold amount (MITA)**

**(i)** For the purpose of entering into commission-only employment, the MITA has been achieved if the employee can establish that in any consecutive 12-month period in the 3 years immediately preceding entering into the commission-only agreement, the employee received

annual remuneration (including any commission or bonus payments) at least equal to 125% of the employee’s classification rate as specified in clause 8, calculated as an annual amount, excluding statutory superannuation.

(ii) The type of documents that an employer may rely upon to establish that the MITA is satisfied, include but are not limited to:

- individual payment summaries;
- pay slips; and/or
- commission statement records or other sales records.

(iii) The employer must be satisfied on reasonable grounds that the employee has established that he or she has achieved the MITA within the prescribed time period.

(iv) At the request of the employer, the employee will provide the employer with a statutory declaration which declares the accuracy and legitimacy of any documentation provided by the employee under sub-clause (ii) above.

(e) The following clauses of this award do not apply to a commission-only employee:

(i) clause 5.3—Part-time employees; clause 5.3(b)—Payment for part-time employment

(ii) clause 5.4—Casual employees

(iii) clause 8—Minimum wages;

(iv) clause 9.1—Payment by wages with commission, bonus or incentive payments

(v) clause 10.2 to ~~10.7~~ 10.8—Allowances; and

(vi) clause 12.1 and 12.2—Overtime.

(f) **Minimum commission-only rate**

(i) The minimum commission-only rate is calculated as 31.5% of the employer’s gross commission as defined in Schedule G—Definitions.

(ii) Subject to clauses 9.7(f)(iii) and (iv), a commission-only employee is always entitled to at least the minimum commission-only rate for each sales or commercial leasing transaction for which the employee was responsible.

(iii) In the situation where:

- two or more employees are separately responsible for different components of a sales or commercial leasing transaction; and

- the employee portion of the employer's net commission is to be split amongst the employees according to the component(s) for which the particular employee was responsible,

any commission-only employee responsible for one or more component(s) is entitled to at least the minimum commission-only rate proportionate to the value of each component.

- (iv) With respect to clause 9.7(f)(iii), component(s) may include, but are not limited to:
- commercial leasing of a property;
  - listing a property or business;
  - managing the listing of a property or business;
  - selling a property or business; and/or
  - nurturing a legally-enforceable contract to completion.
- (v) The proportionate value of each component will be as agreed in writing between the employer and the employee.
- (g) Where it is agreed that an employee will also be entitled to a portion of the commission paid to the employer greater than the minimum commission-only rate prescribed in clause 9.7(f) then any method of calculation, or any formula for calculating what amount of commission will be payable to the employee in excess of the minimum commission-only rate, must be evidenced in a written agreement between the employer and the employee.
- (h) **When commission-only arrangements must cease**
- (i) The gross income of commission-only employees must be reviewed annually to establish gross income.
- (ii) For employees on commission-only arrangements entered into prior to 2 April 2018 the review must occur no later than 12 months from 2 April 2018.
- (iii) For employees engaged on commission-only arrangements entered into after 2 April 2018 the review must occur no later than 12 months from the date those arrangements were entered into.
- (iv) Where the review establishes that the gross income of a commission-only employee for the year under review is less than the MITA as provided in clause 9.7(d) the commission-only arrangement must cease.

(i) **Resumption of commission-only arrangements**

Where a commission-only employee has ceased to be employed on commission-only arrangements because of the operation of clause 9.7(h), the three year period for the purpose of assessing whether the employee has achieved the MITA for the purposes of entering into further commission-only arrangements, commences from the date the employee ceased to be a commission-only employee because of the operation of clause 9.7(h) 9.7(i).



## 10. Allowances

**10.1** Employers must pay to an employee the allowances the employee is entitled to under this award. See Schedule C for a summary of monetary allowances and method of adjustment.

### 10.2 Motor vehicle allowance

(a) If the employer requires the employee to use the employee's own motor vehicle in the course of employment, the employee must be reimbursed for the use of their motor vehicle in accordance with clauses 10.2(b), 10.2(c) or 10.3. This clause does not apply to the use of a motor scooter or motor cycle.

#### (b) Calculation of allowance

(i) An employee must be paid a weekly standing charge allowance plus the amount per kilometre for the distance travelled in performing duties under this award as set out in the table at clause 10.2(b)(iii), calculated by reference to the age and engine capacity of the vehicle.

(ii) If the employer and employee expressly agree in writing, a weekly lump sum payment as set out in the table calculated by reference to the engine capacity of the vehicle, may be applied instead of the standing charge and per kilometre rate.

#### (iii) Allowance rates

Age of vehicle	Engine capacity	Allowance	Rate \$
Up to five years old	Up to and including 1600cc	Standing charge	79.60
		Per kilometre	0.13
		Lump sum	146.15
	1601cc up to and including 2600cc	Standing charge	109.10
		Per kilometre	0.15
		Lump sum	187.91
	Over 2600cc	Standing charge	113.52
		Per kilometre	0.17
		Lump sum	203.57
Over five years old	Up to and including 1600cc	Standing charge	40.45
		Per kilometre	0.13
		Lump sum	109.61
	1601cc up to and including 2600cc	Standing charge	60.55
		Per kilometre	0.15
		Lump sum	140.92
	Over 2600cc	Standing charge	66.03

Age of vehicle	Engine capacity	Allowance	Rate \$
		Per kilometre	0.19
		Lump sum	167.03

- (c) Part-time and casual employees entitled to be paid a motor vehicle allowance in accordance with this clause, will have the entitlement calculated on the basis of one fifth of the appropriate standing charge or lump sum rate for each day worked.
- (d) For the purpose of clauses 10.2(b) and 10.2(c), the age of the vehicle will be determined by reference to the date stamp on the compliance plate of the vehicle.
- (e) Notwithstanding any other provision of clause 10.2, a full-time employee may be reimbursed for the use of their vehicle for the days only where the vehicle is required to be used to perform duties under this award. In such instances, the employee will be entitled to receive one fifth of the weekly lump sum rate in accordance with the above tables for each day the vehicle is used at the direction of the employer. Provided that, where the vehicle is used on three or more days in any week, the full weekly rate will be payable for that week.
- (f) If an employee is entitled to a car allowance in accordance with this clause and the employee changes the motor vehicle thereby entitling the employee to either a higher or lower car allowance rate, the following shall apply:
  - (i) If the change in the vehicle provided by the employee entitles the employee to a higher car allowance rate, such rate will be payable from the first full pay period after the date the employee provides the employer with a true copy of the registration papers of the new motor vehicle; or
  - (ii) If the change in the vehicle provided by the employee entitles the employee to a lower car allowance rate, the employee must notify the employer within seven days of the change and provide a copy of the registration papers of the new motor vehicle

### 10.3 Motor vehicle allowance—alternative

- (a) Instead of the provisions contained in clause 10.2, the employer may elect to pay the employee a **\$0.78** per kilometre allowance for all use of the employee's own motor vehicle in the course of employment, to a maximum of 400 km per week.
- (b) If the employee claims the motor vehicle allowance under this clause, the employee must keep a record of all such usage which will show:
  - (i) the date and odometer reading of the first such usage of the motor vehicle at the commencement of the log book;
  - (ii) the date and commencement and final odometer reading for each day on which the allowance is claimed;
  - (iii) total business kilometres each day;

- (iv) the purpose of each usage; and
- (v) the signature of the employee, certifying the usage.

#### **10.4 Motor vehicle allowance not payable**

- (a) Nothing prescribed under clauses 10.1 or 10.3 shall entitle an employee to be paid any motor vehicle allowance where:
  - (i) the employee is absent from duty without the consent of the employer;
  - (ii) the employee is on any period of paid and/or unpaid leave;
  - (iii) the employee is unable to perform his or her duties under this award due to the loss of their driver's licence; or
  - (iv) the motor vehicle is unavailable due to accident or mechanical defect, provided that such payments will be payable for any day on which the employee provides an alternate motor vehicle for the purpose of performing their work-related duties.
- (b) In these circumstances the motor vehicle entitlement will be reduced by one-fifth of the weekly standing charge or lump sum rate, whichever is applicable, for each day the car is not used by the employee in the course of employment.

#### **10.5 Motor cycle allowance**

- (a) Where the employer requires the employee to use the employee's own motor scooter or motor cycle in the course of employment, the employee will be entitled to be reimbursed for the use of the motor scooter or motor cycle at a rate of \$0.26 per kilometre for its use in the course of employment with a maximum payment as for 400 kilometres per week. Where the employee claims the allowance under this clause, the employee must keep a record of all such usage which will show:
  - (i) the date and odometer reading of the first such usage of the motor scooter or motor cycle at the commencement of the log book;
  - (ii) the date and commencement and final odometer reading for each day on which the allowance is claimed;
  - (iii) total business kilometres each day;
  - (iv) the purpose of each usage; and
  - (v) the signature of the employee, certifying the usage.

#### **10.6 Employer's motor vehicles**

- (a) If the employer provides a motor vehicle for the use of the employee when performing work-related duties, the expenses arising out of the provision, maintenance and lawful operation of such vehicle will be met by the employer.
- (b) The employee must adhere to the employer's lawful directions, conditions or policies in relation to the use of the employer's vehicle.

**10.7 Mobile telephone allowance**

- (a) Where the employer requires the employee to use the employee's own mobile phone in the course of employment and:
  - (i) the mobile telephone is provided under a mobile phone plan from a telecommunications provider, the employer and employee must agree in writing on the amount of reasonable reimbursement payable by the employer to the employee for the use of the employee's mobile phone in the course of employment provided that such reimbursement must not be less than 50% of the cost of the employee's monthly mobile phone plan, up to a maximum monthly phone plan of \$100; or
  - (ii) the mobile phone is a pre-paid mobile phone, the employer and employee must agree in writing on the amount of reasonable reimbursement payable by the employer to the employee for the use of the employee's pre-paid mobile phone.
- (b) Without limiting an agreed method of payment for reimbursement, an employee's salary in excess of the minimum weekly wage may be inclusive of reimbursement providing the reimbursement component of the salary is identified in the agreement.
- (c) The mobile phone allowance under clause 10.7(a) is payable during the entire period of employment, except when the employee is on any period of leave either paid or unpaid.
- (d) If requested, the employee must provide the employer with a copy of the mobile phone plan associated with the mobile telephone to be used by the employee in the course of employment.
- (e) If the employee enters into a new mobile phone plan or arrangement with a telecommunications provider entitling the employee to a different allowance under this sub-clause, the new allowance will become payable from the first full pay period after the date the employee provides the employer with a true copy of the new mobile phone plan.

~~(a) If the employer requires an employee to use the employee's own mobile telephone in the course of employment the employer and employee must, upon commencement of employment, agree in writing on a method of payment for reimbursement of the costs of using that mobile telephone in the course of their employment.~~

~~(b) Without limiting an agreed method of payment for reimbursement, an employee's salary in excess of the minimum weekly wage may be inclusive of reimbursement provided the reimbursement component of the salary is identified in the agreement.~~

~~(c) The agreement made in accordance with clauses 0 and/or 0 must be reasonable when considering the employee's use of their mobile telephone for work related duties.~~

~~(d) If a written agreement is not made as prescribed in clauses 0 and/or 0 and use of a mobile telephone is a requirement of the position, the employer must cover all the costs of ownership, network access, maintenance and payment of work related accounts for this telephone.~~

~~(e) The mobile telephone allowance is payable during the entire period of employment, except when the employee is on leave.~~

## **10.8 Uniforms**

- (a) If the employer requires the employee to wear a uniform, the employer will either pay for or provide the uniform.
- (b) The basis on which the uniform is provided, including what constitutes the uniform, will be at the discretion of the employer.
- (c) The uniform will remain the property of the employer and be returned upon termination of employment.
- (d) The care, laundering and dry cleaning of the uniform will be the responsibility of the employee.

## **10.9 Expenses**

- (a) An employee who incurs any work-related expenses at the request of the employer will be reimbursed by the employer.
- (b) If reasonably practicable, expenses will be paid in advance.
- (c) Clause 10.9(a) will not apply where this award prescribes an allowance for the expense.

See Schedule C for a summary of monetary allowances.

## **11. Superannuation**

### **11.1 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.

### **11.2 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.

### 11.3 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 11.2.
- (b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.
- (c) The employer must pay the amount authorised under clauses 11.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 11.3(a) or (b) was made.

### 11.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 11.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 11.2 and pay the amount authorised under clauses 11.3(a) or (b) to one of the following superannuation funds or its successor:

- (a) REI Super;
- (b) CareSuper;
- (c) Tasplan;
- (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 and is a fund that offers a MySuper product or is an exempt public sector superannuation scheme; or
- (e) a superannuation fund or scheme which the employee is a defined benefit member of.

## Part 5—Penalties and Overtime

### 12. Overtime

12 amended in accordance with [PR584150](#) (12.2 substituted)

## 12.1 Payment for overtime

- (a) Hours worked at the specific direction of the employer in excess of those prescribed in clause 7 other than on an employee’s rostered day or half day off work will be paid at the hourly rate of pay or taken as time off instead of payment for overtime as prescribed in clause 12.2 or paid at the following rates:

Day	% of minimum hourly rate
(i) Hours other than on a rostered day or half day off—all day	100
(ii) Hours on a rostered day or half day off—first two hours	150
(iii) Hours on a rostered day or half day off—after two hours	200

- (b) For the purpose of this clause, **specific direction** means that the employee was given an express instruction to perform work in excess of the hours prescribed under clause 7.
- (c) If the employee works hours in excess of those prescribed under clause 7 at their own initiative (i.e. without any express instruction from the employer to do so) the employee will not be entitled to payment in accordance with this clause.

## 12.2 Time off instead of payment for overtime

- (a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (b) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 12.2.
- (c) An agreement must state each of the following:
- (i) the number of overtime hours to which it applies and when those hours were worked;
  - (ii) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
  - (iii) that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;
  - (iv) that any payment mentioned in subparagraph (iii) must be made in the next pay period following the request.

Note: An example of the type of agreement required by this clause is set out at Schedule J. There is no requirement to use the form of agreement set out at

Schedule J. An agreement under clause 12.2 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

- (d) The period of time off that an employee is entitled to take is the same as the number of overtime hours worked.

EXAMPLE: By making an agreement under clause 12.2 an employee who worked 2 overtime hours is entitled to 2 hours' time off.

- (e) Time off must be taken:
  - (i) within the period of 6 months after the overtime is worked; and
  - (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (f) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 12.2 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in paragraph (e), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (h) The employer must keep a copy of any agreement under clause 12.2 as an employee record.
- (i) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (j) An employee may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 12.2 will apply, including the requirement for separate written agreements under paragraph (b) for overtime that has been worked.

Note: If an employee makes a request under section 65 of the Act for a change in working arrangements, the employer may only refuse that request on reasonable business grounds (see section 65(5) of the Act).

- (k) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 12.2 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

Note: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 12.2.



### 12.3 Stand-by and call-out

- (a) If the employer requires an employee under a property management or strata and community and title management classification to be on stand-by and/or to be called out outside of ordinary hours of work, the employer and employee must, agree in writing on a method of payment for due compensation for the employee being on stand-by and/or call-out.
- (b) Without limiting an agreed method of payment for due compensation, an employee's salary in excess of the minimum weekly wage may be inclusive of due compensation provided that the due compensation component of the salary is identified in the agreement.
- (c) The agreement made in accordance with this clause must be reasonable when considering the extent to which the employee is required to be on stand-by and/or call-out.
- (d) If the employee is on stand-by and/or call-out outside of ordinary hours of work and:
  - (i) the employer and employee have agreed in writing under clauses 12.3(a) and 12.3(b) for the employee to be paid due compensation for being on stand-by and/or call-out, the time during which the employee is on stand-by and/or call-out will not count towards an accrual of ordinary hours of work; or
  - (ii) the employer and employee have not agreed in writing under clauses 12.3(a) and 12.3(b) for the employee to be paid due compensation for being on stand-by and/or call-out, the time during which the employee is on stand-by and/or call-out will count towards an accrual of ordinary hours of work.

## Part 6—Leave, Public Holidays and Other NES Entitlements

### 13. Annual leave

13 amended in accordance with [PR583056](#). (13.11(a) deleted)

**13.1** Annual leave is provided for in the NES. This clause contains additional and supplementary provisions.

### 13.2 Taking leave

- (a) The employer and employee may agree when and for what period the employee is to take the employee's accrued annual leave, having regard to the personal circumstances of the employee and the operational requirements of the employer.
- (b) The employer must not unreasonably refuse to agree to a request by the employee to take accrued annual leave.

- (c) Annual leave should be taken by the employee in the employee's anniversary year in which the entitlement accrues, except if agreed otherwise.

### 13.3 Shut-down

- (a) If the employer has a business shut-down (which may include a partial shut-down) during the year, the employer may require the employee to take any or all accrued annual leave during the period of the shut-down.
- (b) In the event that the employee has insufficient accrued annual leave for the period of the shut-down, the employee may be granted annual leave in advance by the employer.

### 13.4 Payment for annual leave

Subject to clause 9.6, payment for annual leave will be made either at the time the employee takes annual leave or on the employee's normal pay day(s) throughout the period of leave.

NOTE: Where an employee is receiving overaward payments such that the employee's base rate of pay is higher than the rate specified under this award, the employee is entitled to receive the higher rate while on a period of paid annual leave (see ss.16 and 90 of the Act).

### 13.5 Annual leave loading

- (a) During a period of annual leave the employee will receive a loading of **17.5%** calculated on the minimum weekly wage for the employee's classification under this award.
- (b) Annual leave loading is:
  - (i) only payable on leave accrued and not when leave is taken in advance; and
  - (ii) not payable to commission-only employees.

### 13.6 Electronic funds transfer (EFT) payment of annual leave

Despite anything else in this clause, an employee paid by electronic funds transfer (EFT) may be paid in accordance with their usual pay cycle while on paid annual leave.

### 13.7 Annual leave in advance

- (a) An employer and employee may agree in writing to the employee taking a period of paid annual leave before the employee has accrued an entitlement to the leave.
- (b) An agreement must:
  - (i) state the amount of leave to be taken in advance and the date on which leave is to commence; and
  - (ii) be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

Note: An example of the type of agreement required by clause 13.7 is set out at Schedule H. There is no requirement to use the form of agreement set out at Schedule H.

- (c) The employer must keep a copy of any agreement under clause 13.7 as an employee record.
- (d) If, on the termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under clause 13.7, the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

### **13.8 Cashing out of annual leave**

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 13.8.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 13.8.
- (c) An employer and an employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee.
- (d) An agreement under clause 13.8 must state:
  - (i) the amount of leave to be cashed out and the payment to be made to the employee for it; and
  - (ii) the date on which the payment is to be made.
- (e) An agreement under clause 13.8 must be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
- (f) The payment must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made.
- (g) An agreement must not result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.
- (h) The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.
- (i) The employer must keep a copy of any agreement under clause 13.8 as an employee record.

Note 1: Under section 344 of the Fair Work Act, an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 13.8.

Note 2: Under section 345(1) of the Fair Work Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 13.8.

Note 3: An example of the type of agreement required by clause 13.8 is set out at Schedule I. There is no requirement to use the form of agreement set out at Schedule I.

### 13.9 Excessive leave accruals: general provision

Note: Clauses 13.9 to 13.11 contain provisions, additional to the National Employment Standards, about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the Fair Work Act.

- (a) An employee has an **excessive leave accrual** if the employee has accrued more than 8 weeks' paid annual leave.
- (b) If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (c) Clause 13.10 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 13.11 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

### 13.10 Excessive leave accruals: direction by employer that leave be taken

- (a) If an employer has genuinely tried to reach agreement with an employee under clause 13.9(a) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.
- (b) However, a direction by the employer under paragraph (a):
  - (i) is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements (whether made under clause 13.9, 13.10 or 13.11 or otherwise agreed by the employer and employee) are taken into account; and
  - (ii) must not require the employee to take any period of paid annual leave of less than one week; and
  - (iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
  - (iv) must not be inconsistent with any leave arrangement agreed by the employer and employee.
- (c) The employee must take paid annual leave in accordance with a direction under paragraph (a) that is in effect.
- (d) An employee to whom a direction has been given under paragraph (a) may request to take a period of paid annual leave as if the direction had not been given.

Note 1: Paid annual leave arising from a request mentioned in paragraph (d) may result in the direction ceasing to have effect. See clause 13.10(b)(i).

Note 2: Under section 88(2) of the Fair Work Act, the employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.

### **13.11 Excessive leave accruals: request by employee for leave**

~~(a) Clause 13.11 comes into operation from 29 July 2017.~~

- (a) If an employee has genuinely tried to reach agreement with an employer under clause 13.9(a) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.
- (b) However, an employee may only give a notice to the employer under paragraph (a) if:
  - (i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and
  - (ii) the employee has not been given a direction under clause 13.10(a) that, when any other paid annual leave arrangements (whether made under clause 13.9, 13.10 or 13.11 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.
- (c) A notice given by an employee under paragraph (a) must not:
  - (i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 13.9, 13.10 or 13.11 or otherwise agreed by the employer and employee) are taken into account; or
  - (ii) provide for the employee to take any period of paid annual leave of less than one week; or
  - (iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or
  - (iv) be inconsistent with any leave arrangement agreed by the employer and employee.
- (d) An employee is not entitled to request by a notice under paragraph (a) more than 4 weeks' paid annual leave in any period of 12 months.
- (e) The employer must grant paid annual leave requested by a notice under paragraph (a).

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

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

## 15. Parental leave and related entitlements

Parental leave and related entitlements are provided for in the NES.

## 16. Public holidays

Public holidays provisions may be affected by [AM2014/301](#)

**16.1** Public holiday entitlements are provided for in the NES.

**16.2** Subject to the Act, the employer may require the employee to work on a public holiday.

**16.3** An employee who works on a public holiday at the direction of the employer will be entitled to be paid **200%** of the minimum hourly rate for the hours worked, with a minimum payment for three hours work.

### 16.4 Part-day public holiday

16.4 inserted on 21 September 2016

For provisions relating to part-day public holidays see Schedule F.

## 17. Community service leave

Community service leave is provided for in the NES.

## 18. Termination of employment

**18.1** Notice of termination is provided for in the NES.

### 18.2 Notice of termination by an employee

An employee must give one week's notice to the employer to terminate employment. The employer may then elect to pay the employee one week's pay instead of notice. Unless the parties mutually agree in writing to a notice period greater than one week, employment will terminate one week from the date that the employee gives the employer notice to terminate employment. In the event that the required notice is not given, the employer may withhold from any monies due to the employee on termination an amount not exceeding the employee's full rate of pay in respect of the period of notice required by this clause, less any period of notice actually served by the employee.

### 18.3 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.

## **19. Redundancy**

**19.1** Redundancy pay is provided for in the NES.

### **19.2 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.

### **19.3 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.

### **19.4 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 18.3.

## **Part 7—Consultation and Dispute Resolution**

## **20. Consultation**

### **20.1 Consultation regarding major workplace change**

- (a) **Employers to notify**
  - (i) 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.
  - (ii) **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.

**(b) Employers to discuss change**

- (i)** The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 20.1(a), 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.
- (ii)** 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 20.1(a).
- (iii)** 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.

**20.2 Consultation about changes to rosters or hours of work**

- (a)** Where an employer proposes to change an employee's regular roster or ordinary hours of work, the employer must consult with the employee or employees affected and their representatives, if any, about the proposed change.
- (b)** The employer must:
  - (i)** provide to the employee or employees affected and their representatives, if any, information about the proposed change (for example, information about the nature of the change to the employee's regular roster or ordinary hours of work and when that change is proposed to commence);
  - (ii)** invite the employee or employees affected and their representatives, if any, to give their views about the impact of the proposed change (including any impact in relation to their family or caring responsibilities); and
  - (iii)** give consideration to any views about the impact of the proposed change that are given by the employee or employees concerned and/or their representatives.
- (c)** The requirement to consult under this clause does not apply where an employee has irregular, sporadic or unpredictable working hours.
- (d)** These provisions are to be read in conjunction with other award provisions concerning the scheduling of work and notice requirements.



## **21. Dispute resolution**

- 21.1** 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.
- 21.2** 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 21.1 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.
- 21.3** The parties may agree on the process to be utilised by the Fair Work Commission including mediation, conciliation and consent arbitration.
- 21.4** Where the matter in dispute remains unresolved, the Fair Work Commission may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute.
- 21.5** An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.
- 21.6** 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.

## Schedule A— Classification Structure and Definitions

Existing Schedule A deleted and substituted with the following.

### **A.1 Real Estate Employee Level 1 (Associate level)**

**A.1.1** Employees at this level have not been classified as a Level 2, 3 or 4 employee by the employer. An employee at this level is principally engaged to assist and work under the supervision of an employee(s) at a higher level. An employee at this level will not have responsibility for listing and/or selling of real property or businesses or managing rental or strata/community title properties.

**A.1.2** Indicative job titles of a Real Estate Employee Level 1 (Associate Level) include:

- Property Sales Assistant or Property Sales Associate;
- Buyer's Agent Assistant or Associate;
- Property Management Assistant or Property Management Associate;
- Property Officer;
- Leasing Officer or Assistant;
- Strata/Community Title Management Assistant or Strata/Community Title Management Associate.

### **A.1.3 Indicative tasks**

Indicative tasks at this level may include:

- (a) assisting an employee(s) at a higher level;
- (b) under the guidance and/or direction of a more senior person, following up enquiries with sellers and/or buyers of real property and businesses;
- (c) responding to general enquiries from potential tenants for properties under management;
- (d) providing support to an employee(s) at a higher level in undertaking a range of functions associated with the selling, leasing and/or management of real property (including strata title management) and businesses;
- (e) assisting in the preparation of documentation and correspondence in relation to the sale, leasing and/or management of real property (including strata title management) or businesses. Such documentation and correspondence may include:
  - agency agreements;
  - commercial and/or residential leases;
  - advertising material associated with the sale or leasing of real property and businesses;

- property inspection reports (ingoing, outgoing and periodic) under the direction of a more senior person;
- strata/community title management agreements;
- the preparation of minutes from meetings of owner's corporations;
- (f) collecting rents from tenants and/or issuing rental receipts;
- (g) investigating and arranging for the collection of rental arrears;
- (h) prospecting and canvassing under direction of an employee at a higher level, including phone canvassing, door knocking and letter box dropping;
- (i) in consultation with a more senior person, arranging maintenance and repairs to properties under management (including under strata/community title management);
- (j) provide support to an employee at a higher level in a range of functions associated with strata and community title management, in accordance with owners' corporations instructions;
- (k) respond to general enquiries from the owner's corporation of strata/community title schemes;
- (l) assisting with auctions of real property or businesses to the extent permitted under real estate law;
- (m) assisting with property inspections (including open for inspections), including the placement of sign boards, maintaining attendee lists from property inspections, opening and closing homes after inspection;
- (n) assisting with post sale processes including pest and building inspections, searches and checking progress of the conveyance process; and
- (o) preparing and updating rental lists and website material.

## **A.2 Real Estate Employee Level 2 (Representative level)**

**A.2.1** Employees at this level have been classified as Level 2 by the employer. An employee at this level may perform any of the duties of a Real Estate Employee Level 1 (Associate Level) but will also have responsibility for the listing and/or selling of real property or businesses, for helping clients to buy real property or businesses or for managing rental or strata/community title properties or for sourcing and/or securing new property managements (including strata title managements).

**A.2.2** Indicative job titles of a Real Estate Employee Level 2 (Representative Level) include:

- Property Sales Representative or Real Estate Salesperson;
- Buyer's Agent;
- Property Management Representative or Property Manager;
- Business Development Manager;

- Strata/Community Title Management Representative or Strata Title Manager.

### A.2.3 **Indicative tasks**

Indicative tasks at this level may include:

- (a) performing market appraisals for sale or lease of real property or businesses;
- (b) conducting and/or supervising the preparation of documentation and correspondence associated with the sale or leasing of real property or businesses. Such documentation and correspondence may include:
  - agency agreements for both sale and property management;
  - tenancy agreements;
  - rental bond documents;
  - commercial and/or residential leases;
  - advertising material associated with the sale or leasing of real property and businesses;
  - inventory reports;
  - strata/community title management agreements;
  - property inspection reports (ingoing, outgoing and periodic);
- (c) conducting or supervising property inspections (ingoing, outgoing and periodic);
- (d) organising advertising of a property;
- (e) organising sign boards for open for inspections;
- (f) conducting inspections with interested parties for real property or businesses that are for sale or lease;
- (g) conducting negotiations between a prospective buyer and seller of real property or a business, or between a prospective tenant and the property owner;
- (h) using personal initiative to source and secure prospective properties to sell or manage;
- (i) the listing and/or sale of real property or businesses;
- (j) the leasing of commercial, industrial or retail property;
- (k) conducting market research and providing marketing advice to customers;
- (l) conducting auctions of real property;
- (m) liaising with conveyancers and solicitors involved in the sale of real property or businesses or in the commercial leasing process;
- (n) assessing and processing tenancy applications;

- (o) organising property repairs and maintenance, including ingoing and outgoing property condition reports;
- (p) providing advice to property owners and tenants on preventative and planned maintenance;
- (q) accounting for rents and expenses to property owners;
- (r) liaising with and report to property owners and/or owners corporations;
- (s) appearing before tenancy tribunals and providing advice to property owners on state and territory residential tenancy matters (including the termination of tenancies);
- (t) attending and/or conduct strata management meetings;
- (u) completing strata management documentation;
- (v) carrying out all duties and functions required under a strata managing agency agreement.

### **A.3 Real Estate Employee Level 3 (Supervisory level)**

**A.3.1** A principal requirement of an employee at this level is the supervision of employee(s) classified as Real Estate Employee Level 2 (Representative Level). An employee at this level may perform any of the duties of a Real Estate Employee Level 2 (Representative Level) but will also have responsibility for the allocation of duties, co-ordinating work flow, checking progress, quality of work and resolving problems of an employee(s) at a lower level.

**A.3.2** Indicative job titles of a Real Estate Employee Level 3 (Supervisory Level) include:

- Property Sales Manager or Property Sales Supervisor;
- Property Management Supervisor;
- Strata/Community Title Management Supervisor.

### **A.3.3 Indicative tasks**

Indicative tasks at this level may include:

- (a) providing leadership and supervision to level 1 and level 2 employees;
- (b) the supervision and/or management of work teams;
- (c) implementing and/or supervising quality customer service;
- (d) monitoring of operational plans;
- (e) assisting in the resolution of customer complaints;
- (f) monitoring safe workplace practices;
- (g) managing personal work priorities and professional development of self and assisting with the professional development of others in the work team(s);

- (h) training employees at lower level by personal instruction and demonstration;
- (i) involvement in either selling of real property or businesses, leasing of commercial, industrial, retail or residential property, or supervision of a portfolio of rental properties or strata/community title schemes;
- (j) managing the owners corporation processes.

#### **A.4 Real Estate Employee Level 4 (In-Charge-Level)**

**A.4.1** Employees at this level have been classified as Level 4 by the employer. An employee at this level may perform any of the duties of a Real Estate Employee Level 3 (Supervisory Level). The employee at this level will hold applicable qualification(s) under real estate law and have been appointed by the employer to be responsible for ensuring the business complies with its statutory obligations under real estate law.

**A.4.2** Indicative job titles of a Real Estate Employee Level 4 include:

- Licensee-In-Charge;
- Agency Manager.

#### **A.4.3 Indicative tasks**

Indicative tasks at this level may include:

- (a) overall supervision and management of the office;
- (b) planning and managing business finances for the organisation;
- (c) ensuring that the office complies with all of its statutory obligations imposed under relevant real estate law;
- (d) facilitating change and innovation.

## Schedule B—Summary of Hourly Rates of Pay

The rates in Schedule B have been updated as per clause 8.1.

NOTE: Employers who meet their obligations under this schedule are meeting their obligations under the award.

### B.1 Adult full-time and part-time employees

#### B.1.1 Adult full-time and part-time employees—ordinary, penalty and overtime rates

	Ordinary hours	Public holiday	Overtime on rostered day off		
			Monday to Sunday – first 2 hours	Monday to Sunday – after 2 hours	Public holiday
	\$	\$	\$	\$	\$
	% of minimum hourly rate				
	100%	200%	150%	200%	200%
<u>Real Estate Employee Level 1 (Associate Level)</u>	<u>19.16</u>	<u>19.16</u>	<u>38.32</u>	<u>28.74</u>	<u>38.32</u>
<u>After first 12 months of employment at this level</u>	<u>20.23</u>	<u>20.23</u>	<u>40.46</u>	<u>30.35</u>	<u>40.46</u>
<u>Real Estate Employee Level 2 (Representative Level)</u>	<u>21.29</u>	<u>21.29</u>	<u>42.58</u>	<u>31.94</u>	<u>42.58</u>
<u>Real Estate Employee Level 3 (Supervisory Level)</u>	<u>23.42</u>	<u>22.36</u>	<u>44.72</u>	<u>33.54</u>	<u>44.72</u>
<u>Real Estate Employee Level 4 (In-Charge Level)</u>	<u>24.49</u>	<u>23.42</u>	<u>46.84</u>	<u>35.13</u>	<u>46.84</u>

**B.2 Adult casual employees**

**B.2.1 Adult casual hourly rate** includes the casual loading which is payable for all purposes.

**B.2.2 Adult casual employees—ordinary, penalty and overtime rates**

	Ordinary hours	Public holiday	Overtime on rostered day off		
			Monday to Sunday first 2 hours	Monday to Sunday – after 2 hours	Public holiday
	\$	\$	\$	\$	\$
	% of casual hourly rate				
	125%	200%	150%	200%	200%
<u>Real Estate Employee Level 1 (Associate Level)</u>	<u>23.95</u>	<u>47.90</u>	<u>35.93</u>	<u>47.90</u>	<u>47.90</u>
<u>After first 12 months of employment at this level</u>	<u>25.29</u>	<u>50.58</u>	<u>37.94</u>	<u>50.58</u>	<u>50.58</u>
<u>Real Estate Employee Level 2 (Representative Level)</u>	<u>26.61</u>	<u>53.22</u>	<u>39.92</u>	<u>53.22</u>	<u>53.22</u>
<u>Real Estate Employee Level 3 (Supervisory Level)</u>	<u>27.95</u>	<u>55.90</u>	<u>41.93</u>	<u>55.90</u>	<u>55.90</u>
<u>Real Estate Employee Level 4 (In-Charge Level)</u>	<u>29.28</u>	<u>58.56</u>	<u>43.92</u>	<u>58.56</u>	<u>58.56</u>



### B.3 Junior employees

#### B.3.1 Full-time and part-time junior employees—ordinary, penalty and overtime rates

The **junior hourly rate** is based on a percentage of the appropriate adult rate in accordance with clause 8.4. Adult rates apply from 21 years of age

Age	Junior hourly rate—ordinary hours	Public holidays—ordinary hours	Overtime—Monday to Sunday on a rostered day off		Overtime—public holidays
			First 2 hours	After 2 hours	
			% of junior hourly rate		
	100%	200%	150%	200%	200%
	\$	\$	\$	\$	\$
<b><u>Real Estate Employee Level 1 (Associate Level)—first 12 months of employment at this level</u></b>					
Under 19 years	<u>11.50</u>	<u>23.00</u>	<u>17.25</u>	<u>23.00</u>	<u>23.00</u>
19 years	<u>13.41</u>	<u>26.82</u>	<u>20.12</u>	<u>26.82</u>	<u>26.82</u>
20 years	<u>15.33</u>	<u>30.66</u>	<u>23.00</u>	<u>30.66</u>	<u>30.66</u>
<b><u>Real Estate Employee Level 1 (Associate Level) —after first 12 months of employment at this level</u></b>					
Under 19 years	<u>12.14</u>	<u>24.28</u>	<u>18.21</u>	<u>24.28</u>	<u>24.28</u>
19 years	<u>14.16</u>	<u>28.32</u>	<u>21.24</u>	<u>28.32</u>	<u>28.32</u>
20 years	<u>16.18</u>	<u>32.36</u>	<u>24.27</u>	<u>32.36</u>	<u>32.36</u>
<b><u>Real Estate Employee Level 2 (Representative Level)</u></b>					
Under 19 years	<u>12.78</u>	<u>25.56</u>	<u>19.17</u>	<u>25.56</u>	<u>25.56</u>
19 years	<u>14.90</u>	<u>29.80</u>	<u>22.35</u>	<u>29.80</u>	<u>29.80</u>
20 years	<u>17.03</u>	<u>34.06</u>	<u>25.55</u>	<u>34.06</u>	<u>34.06</u>
<b><u>Real Estate Employee Level 3 (Supervisory Level)</u></b>					
Under 19 years	<u>13.41</u>	<u>26.82</u>	<u>20.12</u>	<u>26.82</u>	<u>26.82</u>
19 years	<u>15.65</u>	<u>31.30</u>	<u>23.48</u>	<u>31.30</u>	<u>31.30</u>
20 years	<u>17.89</u>	<u>35.78</u>	<u>26.84</u>	<u>35.78</u>	<u>35.78</u>
<b><u>Real Estate Employee Level 4 (In-Charge Level)</u></b>					
Under 19 years	<u>14.05</u>	<u>28.10</u>	<u>21.08</u>	<u>28.10</u>	<u>28.10</u>
19 years	<u>16.39</u>	<u>32.78</u>	<u>24.59</u>	<u>32.78</u>	<u>32.78</u>
20 years	<u>18.74</u>	<u>37.48</u>	<u>28.11</u>	<u>37.48</u>	<u>37.48</u>

**B.3.2 Casual junior employees—ordinary and penalty rates**

The **junior casual hourly rate** is based on a percentage of the appropriate adult rate and includes the casual loading which is payable for all purposes.

Age	Junior hourly rate— ordinary hours	Public holidays
	% of junior casual hourly rate	
	125%	200%
	\$	\$
<b><u>Real Estate Employee Level 1 (Associate Level)—first 12 months of employment at this level</u></b>		
Under 19 years	<u>14.38</u>	<u>28.76</u>
19 years	<u>16.76</u>	<u>33.52</u>
20 years	<u>19.16</u>	<u>38.32</u>
<b><u>Real Estate Employee Level 1 (Associate Level) —after first 12 months of employment at this level</u></b>		
Under 19 years	<u>15.18</u>	<u>30.36</u>
19 years	<u>17.70</u>	<u>35.40</u>
20 years	<u>20.23</u>	<u>40.46</u>
<b><u>Real Estate Employee Level 2 (Representative Level)</u></b>		
Under 19 years	<u>15.98</u>	<u>31.96</u>
19 years	<u>18.63</u>	<u>37.26</u>
20 years	<u>21.29</u>	<u>42.58</u>
<b><u>Real Estate Employee Level 3 (Supervisory Level)</u></b>		
Under 19 years	<u>16.76</u>	<u>33.52</u>
19 years	<u>19.56</u>	<u>39.12</u>
20 years	<u>22.36</u>	<u>44.72</u>
<b><u>Real Estate Employee Level 4 (In-Charge Level)</u></b>		
Under 19 years	<u>17.56</u>	<u>35.12</u>
19 years	<u>20.49</u>	<u>40.98</u>
20 years	<u>23.43</u>	<u>46.86</u>

**Schedule C—Summary of Monetary Allowances**

Monetary amounts in this clause adjusted as a result of AWR 2017
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**C.1 Expense related allowances**

The following expense related allowances will be payable to employees in accordance with clause 10:

<b>Allowance</b>	<b>Clause</b>	<b>\$</b>
Motor vehicle allowance:		
Vehicle up to five years of age:	10.2(b)(iii)	
Up to and including 1600cc:		
• Standing charge		79.60 per week
• Per kilometre		0.13 per km
• Lump sum		146.15 per week (if agreed on)
1601cc up to and including 2600cc		
• Standing charge		109.10 per week
• Per kilometre		0.15 per km
• Lump sum		187.91 per week (if agreed on)
Over 2600cc		
• Standing charge		113.52 per week
• Per kilometre		0.17 per km
• Lump sum		203.57 per week (if agreed on)
Vehicle over five years of age	10.2(b)(iii)	
Up to and including 1600cc:		
• Standing charge		40.45 per week
• Per kilometre		0.13 per km
• Lump sum		109.61 per week (if agreed on)
1601cc up to and including 2600cc		
• Standing charge		60.55 per week
• Per kilometre		0.15 per km
• Lump sum		140.92 per week (if agreed on)

Allowance	Clause	\$
Over 2600cc		
• Standing charge		66.03 per week
• Per kilometre		0.19 per km
• Lump sum		167.03 per week (if agreed on)
Vehicle allowance (alternative)—to a maximum of 400 kilometres per week	10.3(a)	0.78 per km
<u>Motor cycle allowance—to a maximum of 400 kilometres per week</u>	<u>10.5</u>	<u>0.26 per km</u>
<u>Mobile telephone allowance—maximum phone plan payable</u>	<u>10.7</u>	<u>100 per month</u> <u>(reimbursement see</u> <u>clause 10.7(a)(ii))</u>

## C.2 Adjustment of expense related allowances

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.

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
Motor vehicle allowance	Private motoring sub-group
<u>Motor cycle allowance</u>	<u>Private motoring sub-group</u>
<u>Mobile telephone allowance</u>	<u>Telecommunication equipment and services sub-group</u>

## Schedule D—Supported Wage System

Schedule D updated in accordance with [PR592689](#).

**D.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.

**D.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](http://www.jobaccess.gov.au)

**SWS wage assessment agreement** means the document in the form required by the Department of Social Services that records the employee's productive capacity and agreed wage rate

### **D.3 Eligibility criteria**

**D.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.

**D.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.

## D.4 Supported wage rates

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

D.4.2 Provided that the minimum amount payable must be not less than **\$84** per week.

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

## D.5 Assessment of capacity

D.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.

D.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.

## D.6 Lodgement of SWS wage assessment agreement

D.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 Fair Work Commission.

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

## **D.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.

## **D.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.

## **D.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.

## **D.10 Trial period**

- D.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.
- D.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.
- D.10.3** The minimum amount payable to the employee during the trial period must be no less than **\$84** per week.
- D.10.4** Work trials should include induction or training as appropriate to the job being trialled.
- D.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 D.5.

**Schedule E— National Training Wage**

This scheduled was deleted by [PR593879](#).

DRAFT



## Schedule F —2017 Part-day Public Holidays

The part-day public holidays schedule may be affected by [AM2014/301](#)

Schedule F amended in accordance with [PR598110](#)

This schedule operates where this award otherwise contains provisions dealing with public holidays that supplement the NES.

- F.1** Where a part-day public holiday is declared or prescribed between 7.00 pm and midnight on Christmas Eve (24 December 2017) or New Year's Eve (31 December 2017) the following will apply on Christmas Eve and New Year's Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:
- (a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the NES.
  - (b) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of exercising their right under the NES does not work, they will be paid their ordinary rate of pay for such hours not worked.
  - (c) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of being on annual leave does not work, they will be taken not to be on annual leave between those hours of 7.00 pm and midnight that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.
  - (d) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.
  - (e) Excluding annualised salaried employees to whom clause F.1(f) applies, where an employee works any hours between 7.00 pm and midnight they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.
  - (f) Where an employee is paid an annualised salary under the provisions of this award and is entitled under this award to time off in lieu or additional annual leave for work on a public holiday, they will be entitled to time off in lieu or pro-rata annual leave equivalent to the time worked between 7.00 pm and midnight.
  - (g) An employee not rostered to work between 7.00 pm and midnight, other than an employee who has exercised their right in accordance with clause F.1(a), will not be entitled to another day off, another day's pay or another day of annual leave as a result of the part-day public holiday.

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This schedule is not intended to detract from or supplement the NES.

This schedule is an interim provision and subject to further review.

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## Schedule G—Definitions

Placement of the *definitions* to be determined by Plain Language Process. See [\[2017\] FWCFB 3433](#) at [333].

In this award, unless the contrary intention appears:

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

**casual hourly rate** includes the casual loading which is payable for all purposes

**conjunctive agent fee** means the proportion of commission received from a client from a sales or commercial leasing transaction and paid to a real estate agent external to the employer's business in respect of that transaction

**defined benefit member** has the meaning given by the *Superannuation Guarantee (Administration) Act 1992* (Cth)

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

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

**employer's gross commission** for a commission-only employee means the commission received by the employer from a client for a sales or leasing transaction less GST and conjunctive agent fees

**employer's net commission** for a commission-only employee means the employer's gross commission (as defined) less an amount of no greater than **10%**

**exchange** in relation to a real estate sales transaction means that a contract for the sale of a property or business is a legally-enforceable contract

**exempt public sector superannuation scheme** has the meaning given by the *Superannuation Industry (Supervision) Act 1993* (Cth)

**existing employee** means a person who was employed by the employer prior to 1 January 2010 and who is still employed on 1 January 2010

**junior casual hourly rate** is based on a percentage of the appropriate adult rate and includes the casual loading which is payable for all purposes.

**junior hourly rate** is based on a percentage of the appropriate adult rate in accordance with clause 8.4. Adult rates apply from 21 years of age.

**legally-enforceable contract** means a contract of sale, lease or agreement to lease that is signed by both the property owner and the intending buyer or lessee

**MySuper product** has the meaning given by the *Superannuation Industry (Supervision) Act 1993* (Cth)

**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

**operational employee** means an employee who is engaged under a property sales classification or a property or strata management classification, as defined in Schedule A—

**real estate industry** has the meaning given in clause 3.2

~~means the provisions of services associated with sales, acquisitions, leasing and/or management of residential, commercial, retail, industrial, recreational, hotel, retirement and any other leasehold or real property and/or businesses. Such services include:~~

- ~~• real estate agency;~~
- ~~• business and hotel broking;~~
- ~~• strata and community title management (or similar service however described);~~
- ~~• stock and station agency;~~
- ~~• buyers agency; and~~
- ~~• real estate valuation.~~

**real estate law** means legislation enacted by a State or Territory government for the purposes of regulating the conduct of the real estate industry

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## Schedule H—Agreement to Take Annual Leave in Advance

Schedule H—Agreement to Take Annual Leave in Advance inserted in accordance with [PR583056](#)

Link to PDF copy of [Agreement to Take Annual Leave in Advance](#).

Name of employee: \_\_\_\_\_

Name of employer: \_\_\_\_\_

**The employer and employee agree that the employee will take a period of paid annual leave before the employee has accrued an entitlement to the leave:**

The amount of leave to be taken in advance is: \_\_\_\_ hours/days

The leave in advance will commence on: \_\_\_\_/\_\_\_\_/20\_\_\_\_

Signature of employee: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

Name of employer representative: \_\_\_\_\_

Signature of employer representative: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

*[If the employee is under 18 years of age - include:]*

**I agree that:**

**if, on termination of the employee’s employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken under this agreement, then the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.**

Name of parent/guardian: \_\_\_\_\_

Signature of parent/guardian: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

## Schedule I—Agreement to Cash Out Annual Leave

Schedule I—Agreement to Cash Out Annual Leave inserted in accordance with [PR583056](#)

Link to PDF copy of [Agreement to Cash Out Annual Leave](#).

Name of employee: \_\_\_\_\_

Name of employer: \_\_\_\_\_

### **The employer and employee agree to the employee cashing out a particular amount of the employee's accrued paid annual leave:**

The amount of leave to be cashed out is: \_\_\_\_ hours/days

The payment to be made to the employee for the leave is: \$\_\_\_\_ subject to deduction of income tax/after deduction of income tax (strike out where not applicable)

The payment will be made to the employee on: \_\_\_\_/\_\_\_\_/20\_\_\_\_

Signature of employee: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

Name of employer representative: \_\_\_\_\_

Signature of employer representative: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

*Include if the employee is under 18 years of age:*

Name of parent/guardian: \_\_\_\_\_

Signature of parent/guardian: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

**Schedule J—Agreement for Time Off Instead of Payment for Overtime**

Schedule J— Agreement for time off instead of payment for overtime inserted in accordance with [PR584150](#)

Link to PDF copy of [Agreement for Time Off Instead of Payment for Overtime](#).

Name of employee: \_\_\_\_\_

Name of employer: \_\_\_\_\_

**The employer and employee agree that the employee may take time off instead of being paid for the following amount of overtime that has been worked by the employee:**

Date and time overtime started: \_\_\_/\_\_\_/20\_\_\_ am/pm

Date and time overtime ended: \_\_\_/\_\_\_/20\_\_\_ am/pm

Amount of overtime worked: \_\_\_\_\_ hours and \_\_\_\_\_ minutes

**The employer and employee further agree that, if requested by the employee at any time, the employer must pay the employee for overtime covered by this agreement but not taken as time off. Payment must be made at the overtime rate applying to the overtime when worked and must be made in the next pay period following the request.**

Signature of employee: \_\_\_\_\_

Date signed: \_\_\_/\_\_\_/20\_\_\_

Name of employer representative: \_\_\_\_\_

Signature of employer representative: \_\_\_\_\_

Date signed: \_\_\_/\_\_\_/20\_\_\_