

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

Publication date	Reason for amendments	Clauses affected
1 March 2019	Incorporates changes resulting from [2017] FWCFB 3433	Schedule G (moved to clause 2)
	Incorporates changes resulting from [2018] FWCFB 3500 , PR606432 , PR606630	14, Schedule B, Schedule D
	Incorporates changes resulting from [2018] FWCFB 3936 , PR609435	18 (deleted)
	Error corrected by Modern Awards team	B.2.2 and B.3.2
	Incorporates changes resulting from [2018] FWCFB 4695 , PR700606	11.5
	Incorporates changes resulting from PR701683	Schedule H
	Incorporates changes resulting from [2018] FWCFB 6863 , PR701509	6
	Incorporates changes resulting from [2018] FWCFB 1548	7
	Administrative changes by Modern Awards team	8.5 (deleted), 15
	Incorporates changes resulting from [2018] FWCFB 4735 , PR610140	15
	Exposure Draft	
2 September 2019	Incorporating A clauses into the numbering of the exposure draft	6, 15
	Incorporating changes resulting from [2015] FWCFB 4658 at [57]	17
	Incorporating changes resulting from [2019] FWCFB 1255 at [41]	27.6
	Incorporating changes resulting from [2018] FWCFB 4704 (determination in draft form).	5, 26, 27, 28, 29
	Incorporating changes resulting from [2019] FWCFB 1333 at [35]	1.5 (deleted)
	Incorporates changes resulting from [2019] FWCFB 2548 , PR707023	30
	Incorporates changes resulting from [2019] FWCFB 2634 ; PR707387 , PR709767	10.2, 16.7(a), 16.7(c)(i), 16.7(c)(ii), 16.7(c)(iii), 16.7(e)(i)

Exposure Draft—Real Estate Industry Award 20XX

The Real Estate Industry Award—Exposure Draft was first published on 18 December 2015. Subsequent amendments to the draft are as follows:		
Publication date	Reason for amendments	Clauses affected
	Incorporating plain language amendments to clause content resulting from [2019] FWCFB 2698	1.4 (deleted), 4.3, 4.4, 5.9, 11, 13, 14.1, 16.7, 17, 19, Schedule C, Schedule D
	Incorporating changes resulting from AWR 2018–19 Decision [2019] FWCFB 3500 , PR707524 , PR709080	14.1, 14.6, 17, Schedule B, Schedule C, Schedule D, Supported Wage System , Supported Wage System
	Incorporating changes resulting from [2019] FWCFB 5144	24
	Administrative changes made by Modern Awards team to the document structure and Part and clause titles in accordance with [2019] FWCFB 5409 at [6] and Attachment A	Part 1—, 2, 4, 9, 10, 11, 14, Part 5—, Part 6—, 20.2, 20.3, 23, Part 8—, 29, 30, Schedule E—National Training Wage (deleted), Schedule G—Definitions (moved), Schedule H (moved)
	Incorporating changes resulting from [2019] FWCFB 5409 at [118], [114].	4.3, 4.4, 14.1

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EXPOSURE DRAFT

Real Estate Industry Award 20XX

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 and incorporates award updates up to 2 July 2019. This exposure draft does not seek to amend any entitlements under the Real Estate award. Instead, it has been prepared to address some of the structural issues identified in modern awards and to apply plain language drafting principles and techniques.

The review of this award in accordance with section 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. Some transitional provisions have been deleted as a result of decisions made during the review.

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

Table of Contents

	Page
Part 1— Application and Operation of this Award.....	5
1. Title and commencement	5
2. Definitions	5
3. The National Employment Standards and this award	6
4. Coverage.....	7
5. Individual flexibility arrangements	8
6. Requests for flexible working arrangements.....	9
7. Facilitative provisions	11
Part 2— Types of Employment and Classifications	11
8. Types of employment.....	11
9. Full-time employees	11
10. Part-time employees	11
11. Casual employees	12
12. Classifications	14
Part 3— Hours of Work	14
13. Ordinary hours of work and rostering	14
Part 4— Wages and Allowances.....	15
14. Minimum rates	15
15. Payment of wages.....	17
16. Commission, bonus or incentive payments	18
17. Allowances	23
18. Superannuation	28
Part 5— Overtime.....	29
19. Overtime.....	29
Part 6— Leave and Public Holidays	32
20. Annual leave.....	32
21. Personal/carer’s leave and compassionate leave	37
22. Parental leave and related entitlements	37
23. Community service leave	37
24. Unpaid family and domestic violence leave.....	37
25. Public holidays	37

Part 7— Consultation and Dispute Resolution	38
26. Consultation about major workplace change.....	38
27. Consultation about changes to rosters or hours of work.....	39
28. Dispute resolution	39
Part 8— Termination of Employment and Redundancy.....	40
29. Termination of employment	40
30. Redundancy	41
Schedule A — Classification Structure and Definitions	43
Schedule B —Summary of Hourly Rates of Pay	48
Schedule C —Summary of Monetary Allowances	53
Schedule D —Supported Wage System.....	55
Schedule E —Agreement to Take Annual Leave in Advance	58
Schedule F —Agreement to Cash Out Annual Leave.....	59
Schedule G —Agreement for Time Off Instead of Payment for Overtime.....	60
Schedule H —Part-day Public Holidays	61

Part 1—Application and Operation of this Award

1. Title and commencement

Clause 1.4 deleted as a result of re-structure [2019] FWCFB 5409 at [6]. Clause 1.5 deleted in accordance with [2019] FWCFB 1333 at [35].

- 1.1 This award is the *Real Estate Industry Award 20XX*.
- 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 Clause 2—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. Definitions

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

conjunctional 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 conjunctional agent fees

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 14.4. 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—~~Classification Structure and Definitions~~—~~Classification Structure and Definitions~~

real estate industry has the meaning given in clause 4.2

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

3. The National Employment Standards and this award

- 3.1 The [National Employment Standards](#) (NES) and this award contain the minimum conditions of employment for employees covered by this award.
- 3.2 Where this award refers to a condition of employment provided for in the [NES](#), the [NES](#) definition applies.
- 3.3 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.

4. Coverage

Clauses 4.3 and 4.4 amended in accordance with [2019] FWCFB 5409 at [118].

- 4.1 This industry award covers employers in Australia engaged in the real estate industry in respect to their employees engaged in classifications in clause 14—~~Minimum rates~~ ~~Minimum rates~~ to the exclusion of any other modern award.
- 4.2 **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.
- 4.3 This award covers any employer which supplies labour on an on-hire basis in the real estate industry ~~set out in clauses 4.1 and 4.2~~ in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in that industry. ~~This subclause—Clause 4.3~~ operates subject to the exclusions from coverage in this award.
- 4.4 This award covers employers which provide group training services for trainees engaged in the real estate industry and/or parts of that industry ~~set out in clause 4.1 and 4.2~~ 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—Clause 4.4~~ operates subject to the exclusions from coverage in this award.
- 4.5 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.
- 4.6 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.

5. Individual flexibility arrangements

Clause 5 substituted in accordance with [\[2018\] FWCFCB 4704](#) (determination in draft form).

5.1 Despite anything else in this award, an employer and an individual employee may agree to vary the application of the terms of this award relating to any of the following in order to meet the genuine needs of both the employee and the employer:

(a) arrangements for when work is performed; or

(b) overtime rates; or

(c) penalty rates; or

(d) allowances; or

(e) annual leave loading.

5.2 An agreement must be one that is genuinely made by the employer and the individual employee without coercion or duress.

5.3 An agreement may only be made after the individual employee has commenced employment with the employer.

5.4 An employer who wishes to initiate the making of an agreement must:

(a) give the employee a written proposal; and

(b) if the employer is aware that the employee has, or reasonably should be aware that the employee may have, limited understanding of written English, take reasonable steps (including providing a translation in an appropriate language) to ensure that the employee understands the proposal.

5.5 An agreement must result in the employee being better off overall at the time the agreement is made than if the agreement had not been made.

5.6 An agreement must do all of the following:

(a) state the names of the employer and the employee; and

(b) identify the award term, or award terms, the application of which is to be varied; and

(c) set out how the application of the award term, or each award term, is varied; and

(d) set out how the agreement results in the employee being better off overall at the time the agreement is made than if the agreement had not been made; and

(e) state the date the agreement is to start.

5.7 An agreement must be:

(a) in writing; and

(b) signed by the employer and the employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

5.8 Except as provided in clause 5.7(b), an agreement must not require the approval or consent of a person other than the employer and the employee.

5.9 The employer must keep the agreement as a time and wages record and give a copy to the employee.

5.10 The employer and the employee must genuinely agree, without duress or coercion to any variation of an award provided for by an agreement.

5.11 An agreement may be terminated:

(a) at any time, by written agreement between the employer and the employee; or

(b) by the employer or employee giving 13 weeks' written notice to the other party (reduced to 4 weeks if the agreement was entered into before the first full pay period starting on or after 4 December 2013).

NOTE: If an employer and employee agree to an arrangement that purports to be an individual flexibility arrangement under this award term and the arrangement does not meet a requirement set out in section 144 then the employee or the employer may terminate the arrangement by giving written notice of not more than 28 days (see section 145 of the Act).

5.12 An agreement terminated as mentioned in clause 5.11(b) ceases to have effect at the end of the period of notice required under that clause.

5.13 The right to make an agreement under clause 5 is additional to, and does not affect, any other term of this award that provides for an agreement between an employer and an individual employee.

6. Requests for flexible working arrangements

6.1 Employee may request change in working arrangements

Clause 6 applies where an employee has made a request for a change in working arrangements under section 65 of the [Act](#).

NOTE 1: Section 65 of the [Act](#) provides for certain employees to request a change in their working arrangements because of their circumstances, as set out in section 65(1A). Clause 6 supplements or deals with matters incidental to the [NES](#) provisions.

NOTE 2: An employer may only refuse a section 65 request for a change in working arrangements on 'reasonable business grounds' (see section 65(5) and (5A)).

NOTE 3: Clause 6 is an addition to section 65.

6.2 Responding to the request

Before responding to a request made under section 65, the employer must discuss the request with the employee and genuinely try to reach agreement on a change in working arrangements that will reasonably accommodate the employee's circumstances having regard to:

- (a) the needs of the employee arising from their circumstances;
- (b) the consequences for the employee if changes in working arrangements are not made; and
- (c) any reasonable business grounds for refusing the request.

NOTE 1: The employer must give the employee a written response to an employee's section 65 request within 21 days, stating whether the employer grants or refuses the request (section 65(4)).

NOTE 2: If the employer refuses the request, then the written response must include details of the reasons for the refusal (section 65(6)).

6.3 What the written response must include if the employer refuses the request

- (a) Clause 6.3 applies if the employer refuses the request and has not reached an agreement with the employee under clause 6.2.
- (b) The written response under section 65(4) must include details of the reasons for the refusal, including the business ground or grounds for the refusal and how the ground or grounds apply.
- (c) If the employer and employee could not agree on a change in working arrangements under clause 6.2, then the written response under section 65(4) must:
 - (i) state whether or not there are any changes in working arrangements that the employer can offer the employee so as to better accommodate the employee's circumstances; and
 - (ii) if the employer can offer the employee such changes in working arrangements, set out those changes in working arrangements.

6.4 What the written response must include if a different change in working arrangements is agreed

If the employer and the employee reached an agreement under clause 6.2 on a change in working arrangements that differs from that initially requested by the employee, then the employer must provide the employee with a written response to their request setting out the agreed change(s) in working arrangements.

6.5 Dispute resolution

Disputes about whether the employer has discussed the request with the employee and responded to the request in the way required by clause 6, can be dealt with under clause 28—Dispute resolution.

7. Facilitative provisions

7.1 A facilitative provision provides that the standard approach in an award provision may be departed from by agreement between an employer and an individual employee, or the majority of employees in the enterprise or part of the enterprise concerned.

7.2 Facilitative provisions in this award are contained in the following clauses:

Clause	Provision	Agreement between an employer and:
19.2	Time off instead of payment for overtime	An individual
20.7	Annual leave in advance	An individual
20.8	Cashing out of annual leave	An individual

Part 2—Types of Employment and Classifications

8. Types of employment

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.

9. Full-time employees

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

10. Part-time employees

Clause 10.2 amended in accordance with [\[2019\] FWCFB 2634](#); [PR707387](#) and [PR709767](#).

10.1 A part-time employee:

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

10.2 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.~~

Part-time 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.

11. Casual employees

Casual overtime issue referred to Full Bench in AM2017/51, see [\[2018\] FWCFB 1405](#) at [10].

11.1 A casual employee is engaged and paid as a casual employee.

11.2 The minimum engagement for a casual employee is ~~three~~3 hours.

11.3 Casual loading

(a) For each minimum hour worked, a casual employee must be paid:

- (i) the minimum hourly rate; and
 - (ii) a loading of 25% of the minimum hourly rate,
- for the classification in which they are employed.

(b) 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.

(c) The loading constitutes part of the casual employee's all-purpose rate.

11.4 An employee engaged and paid as a casual employee must not be employed on a commission-only basis under clause 16.7.

11.5 Right to request casual conversion

(a) A person engaged by a particular employer as a regular casual employee may request that their employment be converted to full-time or part-time employment.

(b) A **regular casual employee** is a casual employee who has in the preceding period of 12 months worked a pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to perform as a full-time employee or part-time employee under the provisions of this award.

(c) A regular casual employee who has worked equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to full-time employment.

(d) A regular casual employee who has worked less than equivalent full-time hours over the preceding period of 12 months' casual employment may request to have

Exposure Draft—Real Estate Industry Award 20XX

their employment converted to part-time employment consistent with the pattern of hours previously worked.

- (e) Any request under ~~this subclause~~ clause 11.5 must be in writing and provided to the employer.
- (f) Where a regular casual employee seeks to convert to full-time or part-time employment, the employer may agree to or refuse the request, but the request may only be refused on reasonable grounds and after there has been consultation with the employee.
- (g) Reasonable grounds for refusal include that:
 - (i) it would require a significant adjustment to the casual employee's hours of work in order for the employee to be engaged as a full-time or part-time employee in accordance with the provisions of this award—that is, the casual employee is not truly a regular casual employee as defined in ~~paragraph (b)~~ clause 11.5(b);
 - (ii) it is known or reasonably foreseeable that the regular casual employee's position will cease to exist within the next 12 months;
 - (iii) it is known or reasonably foreseeable that the hours of work which the regular casual employee is required to perform will be significantly reduced in the next 12 months; or
 - (iv) it is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the employee's hours of work are required to be performed in the next 12 months which cannot be accommodated within the days and/or hours during which the employee is available to work.
- (h) For any ground of refusal to be reasonable, it must be based on facts which are known or reasonably foreseeable.
- (i) Where the employer refuses a regular casual employee's request to convert, the employer must provide the casual employee with the employer's reasons for refusal in writing within 21 days of the request being made.
- (j) If the employee does not accept the employer's refusal, this will constitute a dispute that will be dealt with under the dispute resolution procedure in clause 28—Dispute resolution. Under that procedure, the employee or the employer may refer the matter to the Fair Work Commission if the dispute cannot be resolved at the workplace level.
- (k) Where it is agreed that a casual employee will have their employment converted to full-time or part-time employment as provided for in clause 11.5, the employer and employee must discuss and record in writing:
 - (i) the form of employment to which the employee will convert—that is, full-time or part-time employment; and
 - (ii) if it is agreed that the employee will become a part-time employee, the matters referred to in clause 10—Part-time employees.

Exposure Draft—Real Estate Industry Award 20XX

- (l) The conversion will take effect from the start of the next pay cycle following such agreement being reached unless otherwise agreed.
- (m) Once a casual employee has converted to full-time or part-time employment, the employee may only revert to casual employment with the written agreement of the employer.
- (n) A casual employee must not be engaged and re-engaged (which includes a refusal to re-engage), or have their hours reduced or varied, in order to avoid any right or obligation under clause 11.5.
- (o) Nothing in clause 11.5 obliges a regular casual employee to convert to full-time or part-time employment, nor permits an employer to require a regular casual employee to so convert.
- (p) Nothing in clause 11.5 requires an employer to increase the hours of a regular casual employee seeking conversion to full-time or part-time employment.
- (q) An employer must provide a casual employee, whether a regular casual employee or not, with a copy of the provisions of ~~this subclause clause~~ 11.5 within the first 12 months of the employee's first engagement to perform work. In respect of casual employees already employed as at 1 October 2018, an employer must provide such employees with a copy of the provisions of ~~this subclause clause~~ 11.5 by 1 January 2019.
- (r) A casual employee's right to request to convert is not affected if the employer fails to comply with the notice requirements in clause 11.5(q).

12. Classifications

- 12.1 Schedule A—~~Classification Structure and Definitions—Classification Structure and Definitions~~ to this award contains a definition for each classification in clause 14.1.
- 12.2 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

13. Ordinary hours of work and rostering

- 13.1 Subject to clause 13.2, ordinary hours of work are 38 hours per week, which may be worked on any day of the week.
- 13.2 **Averaging of hours of work**

Hours of work may be averaged over an ~~eight~~8 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.

13.3 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.

13.4 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

14. Minimum rates

Monetary amounts adjusted as a result of AWR 2019 – changes not tracked.

Minimum rates table amended in accordance with [\[2019\] FWCFB 5409](#) at [114].

- 14.1 An employer must pay adult employees the following minimum ~~rates_wages~~ for ordinary hours worked by the employee:

Employee classification	Minimum weekly rate \$ <u>(full-time employee)</u>
Real Estate Employee Level 1 (Associate Level)— first 12 months of employment at this level	776.30
Real Estate Employee Level 1 (Associate Level)— after first 12 months of employment at this level	819.40
Real Estate Employee Level 2 (Representative Level)	862.50
Real Estate Employee Level 3 (Supervisory Level)	948.80

Exposure Draft—Real Estate Industry Award 20XX

Employee classification	Minimum weekly rate \$ <i>(full-time employee)</i>
Real Estate Employee Level 4 (In-Charge Level)	992.00

See Schedule B—Summary of Hourly Rates of Pay for a summary of hourly rates of pay including overtime and penalties.

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

NOTE: All past service of an employee engaged as a Real Estate Employee Level 1 (Associate Level) as at the coming into force of clause 14.1, shall count for the purpose of determining if the employee is to be paid the minimum *wage-rate* in their first 12 months of employment or higher.

14.3 The minimum weekly *wage-rate* in clause 14.1 is not payable to an employee engaged on a commission-only basis pursuant to clause 16.7.

14.4 Junior employee rates

(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 *rate wage* for their classification, as set out below:

Age	% of adult rate
Under 19 years	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.

14.5 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.

14.6 National training wage

(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 2018~~ **1 July 2019**. 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*.

15. Payment of wages

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.

15.1 Frequency of payment

- (a) Wages and allowances will be paid by the employer on a weekly, fortnightly or monthly cycle, except as provided in clause 15.2.
- (b) 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.

15.2 Commission, bonus or incentive payments

- (a) If an employee is entitled to receive any commission, bonus or incentive payment in accordance with a written agreement made under clause 16, Commission, bonus or incentive payments, payment to the employee must be made within 14 days of the entitlement becoming payable.
- (b) 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.

15.3 Payment may be made by cash, cheque or electronic funds transfer (EFT), at the discretion of the employer.

15.4 Payment on termination of employment

- (a) The employer must pay an employee no later than 7 days after the day on which the employee's employment terminates:
 - (i) the employee's wages under this award for any complete or incomplete pay period up to the end of the day of termination; and
 - (ii) all other amounts that are due to the employee under this award and the [NES](#).
- (b) The requirement to pay wages and other amounts under ~~paragraph (a) clause~~ 15.4(a) is subject to further order of the Commission and the employer making deductions authorised by this award or the [Act](#).

NOTE 1: Section 117(2) of the [Act](#) provides that an employer must not terminate an employee's employment unless the employer has given the employee the required minimum period of notice or "has paid" to the employee payment instead of giving notice.

NOTE 2: ~~Paragraph (b) Clause~~ 15.4(b) allows the Commission to make an order delaying the requirement to make a payment under ~~this clause~~ 15.4. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under section 120 of the [Act](#) for the Commission to reduce the amount of redundancy pay an employee is entitled to under the [NES](#).

NOTE 3: State and Territory long service leave laws or long service leave entitlements under section 113 of the [Act](#), may require an employer to pay an employee for accrued long service leave on the day on which the employee's employment terminates or shortly after.

16. Commission, bonus or incentive payments

Clause 16.7 amended in accordance with [\[2019\] FWCFB 2634](#); [PR707387](#) and [PR709767](#).

16.1 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 16.1(a)) particulars of the bonus or incentive payment entitlement must be evidenced in a written agreement between the employer and the employee.

16.2 Written agreements generally

- (a) Once a written agreement has been made as provided for in clause 16.1—~~Payment by wages with commission, bonus or incentive payments~~ or clause 16.7—~~Commission only employment~~, 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 16.2 or clause 16.1) 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.

16.3 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.

16.4 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 16.1 or 16.7 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's employment terminates 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 clause 16.4, "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 16.4 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 clauses 16.1 or 16.7 specifies otherwise, the portion of the commission, incentive payments or bonuses referred to in clause 16.4(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 16.4 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.

16.5 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 16.1 or 16.7, the matter will be dealt with in accordance with clause 28—Dispute resolution.

16.6 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 16.7(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 16.6(a) must be clearly set out in a written agreement.

Exposure Draft—Real Estate Industry Award 20XX

- (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 14.1 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 14—~~Minimum rates~~Minimum rates 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.

16.7 Commission-only employment

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

(i) An employee engaged in property sales or commercial, industrial or retail leasing as a Real Estate Employee Level 2 or higher (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.~~

~~(i)(ii)~~ An employee paid on a commission-only basis must not be engaged as a part-time or 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 at the same property sales level 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 16.2 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 16.2;
 - 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 (with~~

Exposure Draft—Real Estate Industry Award 20XX

~~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 has been engaged in property sales or commercial, industrial or retail leasing as a Real Estate Employee Level 2 or higher with any Licenced Real Estate Agent, or has operated his or her own real estate business, for at least 12 consecutive months in the 3 years prior to entering into a commission-only agreement;~~
- the employee is at least 21 years of age;
- the employee is not engaged as a part-time employee, a casual, a junior, a Real Estate Employee Level 1 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 16.7(d) 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) For the purpose of clause 16.7(c)(i), “real estate business” shall mean a business involved in the sale of real property or businesses.

(iii) 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 16.7(d).

(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 14—~~Minimum rates~~Minimum rates, 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.

Exposure Draft—Real Estate Industry Award 20XX

- (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 clause 16.7(d)(ii).
- (e) The following clauses of this award do not apply to a commission-only employee:
- (i) clause 10—Part-time employees~~10.2—Payment for part-time employment~~
 - (ii) clause 11—Casual employees;
 - (iii) clause 14—~~Minimum rates~~Minimum rates;
 - (iv) clause 16.1—Payment by wages with commission, bonus or incentive payments;
 - (v) clause 17.2 to 17.8—Allowances;
 - (vi) clause 19.1 and 19.2—Overtime; and
 - (vii) clause 20.6—Annual leave loading.
- (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~~ clause 2—Definitions.
 - (ii) Subject to clauses 16.7(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~~2 or more employees are separately responsible for different components of a sales or commercial leasing transaction; and
 - the employee portion of the employer's gross 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 16.7(f)(iii), component(s) may include, but are not limited to:
 - commercial leasing of a property;

Exposure Draft—Real Estate Industry Award 20XX

- 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 16.7(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 16.7(d) the commission-only arrangement must cease.
- (i) **Resumption of commission-only arrangements**

Where a commission-only employee has ceased to be employed on a commission-only arrangement because of the operation of clause 16.7(h), the ~~three~~3 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 16.7(h).

17. Allowances

Monetary amounts in this clause adjusted as a result of AWR 2019 – changes not tracked.

Note inserted in accordance with [\[2015\] FWCFB 4658](#) at [57].

[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.](#)

17.1 Employers must pay to an employee the allowances the employee is entitled to under this award. See Schedule C—Summary of Monetary Allowances for a summary of monetary allowances and method of adjustment.

17.2 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 17.2(b), 17.2(c) or 17.3. ~~This~~ clause 17.2 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 17.2(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 <u>5</u> 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 <u>5</u> 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
		Per kilometre	0.19

Exposure Draft—Real Estate Industry Award 20XX

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

- (c) Part-time and casual employees entitled to be paid a motor vehicle allowance in accordance with ~~this~~ clause 17.2, 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 17.2(b) and 17.2(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 17.2, 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~~ 3 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 17.2 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~~ 7 days of the change and provide a copy of the registration papers of the new motor vehicle

17.3 Motor vehicle allowance—alternative

- (a) Instead of the provisions contained in clause 17.2, 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 17.3, 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.

17.4 Motor vehicle allowance not payable

- (a) Nothing prescribed under clauses 17.1 or 17.3 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.

17.5 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 17.5, 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.

17.6 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.

17.7 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 17.7(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.

17.8 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.

17.9 Adjustment of expense-related allowances

- (a) At the time of any adjustment to the standard rate, each expense-related allowance will be increased by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.
- (b) The applicable index figure is the index figure published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index (Cat No. 6401.0), as follows:

Allowance	Applicable Consumer Price Index figure
Motor vehicle allowance	Private motoring sub-group
Motor cycle allowance	Private motoring sub-group
Mobile telephone allowance	Telecommunication equipment and services sub-group

17.10 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—Summary of Monetary Allowances for a summary of monetary allowances.

18. Superannuation

18.1 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.

18.2 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.

18.3 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 18.2.
- (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 18.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 18.3(a) or (b) was made.

18.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 18.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 18.2 and pay the amount authorised under clauses 18.3(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—Overtime

19. Overtime

19.1 Payment for overtime

- (a) Hours worked at the specific direction of the employer in excess of those prescribed in clause 13—Ordinary hours of work and rostering other than on an employee's rostered day or half day off work will be paid at the hourly rate of

Exposure Draft—Real Estate Industry Award 20XX

pay or taken as time off instead of payment for overtime as prescribed in clause 19.2 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 2 hours	150
(iii)	Hours on a rostered day or half day off—after two 2 hours	200

- (b) For the purpose of ~~this~~ clause 19.1, **specific direction** means that the employee was given an express instruction to perform work in excess of the hours prescribed under clause 13—Ordinary hours of work and rostering.
- (c) If the employee works hours in excess of those prescribed under clause 13—Ordinary hours of work and rostering 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 19.1.

19.2 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 19.2.
- (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)~~ clause 19.2(c)(iii) must be made in the next pay period following the request.

NOTE: An example of the type of agreement required by ~~this~~ clause 19.2 is set out at Schedule G—~~Agreement for Time Off Instead of Payment for Overtime—Agreement for Time Off Instead of Payment for Overtime~~. There is no requirement to use the form of agreement set out at Schedule G—~~Agreement for Time Off Instead of Payment for Overtime—Agreement for Time Off Instead of~~

Exposure Draft—Real Estate Industry Award 20XX

Payment for Overtime. An agreement under clause 19.2 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 19.2 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 19.2 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)~~ clause 19.2(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 19.2 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 19.2 will apply, including the requirement for separate written agreements under ~~paragraph (b)~~ clause 19.2(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 19.2 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 19.2.

19.3 Stand-by and call-out

- (a) Where the employer requires an employee under a property management or strata and community and title management role 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~~ 19.3 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 19.3(a) and 19.3(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 19.3(a) and 19.3(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 and Public Holidays

20. Annual leave

20.1 Annual leave is provided for in the [NES](#). ~~This clause~~ [Clause 20](#) contains additional and supplementary provisions.

20.2 [Payment for annual leave](#)

Subject to clause 16.6, 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 over-award 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 sections 16 and 90 of the [Act](#)).

20.3 Electronic funds transfer (EFT) payment of annual leave

Despite anything else in clause 20, an employee paid by electronic funds transfer (EFT) may be paid in accordance with their usual pay cycle while on paid annual leave.

20.4 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.

20.5 Shut-down

Issue remains outstanding with further decision to be issued – see [2019] FWCFB 5409 at [247].

- (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.

Payment for annual leave

~~Subject to clause 16.6, 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 over award 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 sections 16 and 90 of the Act).~~

20.6 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.

~~Electronic funds transfer (EFT) payment of annual leave~~

~~Despite anything else in clause 20, an employee paid by electronic funds transfer (EFT) may be paid in accordance with their usual pay cycle while on paid annual leave.~~

20.7 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 20.7 is set out at Schedule E—Agreement to Take Annual Leave in Advance. There is no requirement to use the form of agreement set out at Schedule E—Agreement to Take Annual Leave in Advance.

- (c) The employer must keep a copy of any agreement under clause 20.7 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 20.7, 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.

20.8 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 20.8.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 20.8.
- (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 20.8 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 20.8 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.

Exposure Draft—Real Estate Industry Award 20XX

- (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 20.8 as an employee record.

NOTE 1: Under section 344 of the [Act](#), an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 20.8.

NOTE 2: 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 20.8.

NOTE 3: An example of the type of agreement required by clause 20.8 is set out at Schedule F—Agreement to Cash Out Annual Leave. There is no requirement to use the form of agreement set out at Schedule F—Agreement to Cash Out Annual Leave.

20.9 Excessive leave accruals: general provision

NOTE: Clauses 20.9 to 20.11 contain provisions, additional to the [NES](#), 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 [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 20.10 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 20.11 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

20.10 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 20.9(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)~~ clause 20.10(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 20.9,

Exposure Draft—Real Estate Industry Award 20XX

20.10 or 20.11 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) clause~~ 20.10(a) that is in effect.
 - (d) An employee to whom a direction has been given under ~~paragraph (a) clause~~ 20.10(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) clause~~ 20.10(d) may result in the direction ceasing to have effect. See clause 20.10(b)(i).

NOTE 2: Under section 88(2) of the [Act](#), the employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.

20.11 Excessive leave accruals: request by employee for leave

- (a) If an employee has genuinely tried to reach agreement with an employer under clause 20.9(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) clause~~ 20.11(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 20.10(a) that, when any other paid annual leave arrangements (whether made under clause 20.9, 20.10 or 20.11 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) clause~~ 20.11(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 20.9, 20.10 or 20.11 or otherwise agreed by the employer and employee) are taken into account; or

Exposure Draft—Real Estate Industry Award 20XX

- (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) clause 20.11(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) clause 20.11(a)~~.

21. Personal/carer's leave and compassionate leave

Personal/carer's leave and compassionate leave are provided for in the [NES](#).

22. Parental leave and related entitlements

Parental leave and related entitlements are provided for in the [NES](#).

23. Community service leave

Community service leave is provided for in the [NES](#).

24. Unpaid family and domestic violence leave

Clause 24 inserted in accordance with [\[2019\] FWCFB 5144](#) at [13].

Unpaid family and domestic violence leave is provided for in the NES.

NOTE 1: Information concerning an employee's experience of family and domestic violence is sensitive and if mishandled can have adverse consequences for the employee. Employers should consult with such employees regarding the handling of this information.

NOTE 2: Depending upon the circumstances, evidence that would satisfy a reasonable person of the employee's need to take family and domestic violence leave may include a document issued by the police service, a court or family violence support service, or a statutory declaration.

25. Public holidays

25.1 Public holiday entitlements are provided for in the [NES](#).

25.2 Subject to the [Act](#), the employer may require the employee to work on a public holiday.

25.3 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~~3 hours work.

25.4 **Part-day public holiday**

For provisions relating to part-day public holidays see Schedule H—Part-day Public Holidays.

Part 7—Consultation and Dispute Resolution

26. **Consultation about major workplace change**

Clause 26 substituted in accordance with [2018] FWCFB 4704 (determination in draft form).

26.1 If an employer makes a definite decision to make major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must:

(a) give notice of the changes to all employees who may be affected by them and their representatives (if any); and

(b) discuss with affected employees and their representatives (if any):

(i) the introduction of the changes; and

(ii) their likely effect on employees; and

(iii) measures to avoid or reduce the adverse effects of the changes on employees; and

(c) commence discussions as soon as practicable after a definite decision has been made.

26.2 For the purposes of the discussion under clause 26.1(b), the employer must give in writing to the affected employees and their representatives (if any) all relevant information about the changes including:

(a) their nature; and

(b) their expected effect on employees; and

(c) any other matters likely to affect employees.

26.3 Clause 26.2 does not require an employer to disclose any confidential information if its disclosure would be contrary to the employer's interests.

26.4 The employer must promptly consider any matters raised by the employees or their representatives about the changes in the course of the discussion under clause 26.1(b).

26.5 In clause 26 **significant effects, on employees,** includes any of the following:

(a) termination of employment; or

- (b) major changes in the composition, operation or size of the employer’s workforce or in the skills required; or
- (c) loss of, or reduction in, job or promotion opportunities; or
- (d) loss of, or reduction in, job tenure; or
- (e) alteration of hours of work; or
- (f) the need for employees to be retained or transferred to other work or locations; or
- (g) job restructuring.

26.6 Where this award makes provision for alteration of any of the matters defined at clause 26.5, such alteration is taken not to have significant effect.

27. Consultation about changes to rosters or hours of work

Clause 27 substituted in accordance with [2018] FWCFB 4704 (determination in draft form).

- 27.1 Clause 27 applies if an employer proposes to change the regular roster or ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic or unpredictable.
- 27.2 The employer must consult with any employees affected by the proposed change and their representatives (if any).
- 27.3 For the purpose of the consultation, the employer must:
 - (a) provide to the employees and representatives mentioned in clause 27.2 information about the proposed change (for example, information about the nature of the change and when it is to begin); and
 - (b) invite the employees to give their views about the impact of the proposed change on them (including any impact on their family or caring responsibilities) and also invite their representative (if any) to give their views about that impact.
- 27.4 The employer must consider any views given under clause 27.3(b).
- 27.5 Clause 27 is to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.

27-28. Dispute resolution

Clause 28 substituted in accordance with [2018] FWCFB 4704 (determination in draft form).

- 28.1 Clause 28 sets out the procedures to be followed if a dispute arises about a matter under this award or in relation to the NES.
- 28.2 The parties to the dispute must first try to resolve the dispute at the workplace through discussion between the employee or employees concerned and the relevant supervisor.

- 28.3 If the dispute is not resolved through discussion as mentioned in clause 28.2, the parties to the dispute must then try to resolve it in a timely manner at the workplace through discussion between the employee or employees concerned and more senior levels of management, as appropriate.
- 28.4 If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses 28.2 and 28.3, a party to the dispute may refer it to the Fair Work Commission.
- 28.5 The parties may agree on the process to be followed by the Fair Work Commission in dealing with the dispute, including mediation, conciliation and consent arbitration.
- 28.6 If the dispute remains unresolved, the Fair Work Commission may use any method of dispute resolution that it is permitted by the Act to use and that it considers appropriate for resolving the dispute.
- 28.7 A party to the dispute may appoint a person, organisation or association to support and/or represent them in any discussion or process under clause 28.
- 28.8 While procedures are being followed under clause 28 in relation to a dispute:
- (a) work must continue in accordance with this award and the Act; and
 - (b) an employee must not unreasonably fail to comply with any direction given by the employer about performing work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.
- 28.9 Clause 28.8 is subject to any applicable work health and safety legislation.

Part 8—Termination of Employment and Redundancy

28.29. Termination of employment

Clause 29 substituted in accordance with [2018] FWCFB 4704 (determination in draft form).

NOTE: The NES sets out requirements for notice of termination by an employer. See sections 117 and 123 of the Act.

29.1 Notice of termination by an employee

- (a) Clause 29.1 applies to all employees except those identified in sections 123(1) and 123(3) of the Act.
- (b) 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.
- (c) If an employee who is at least 18 years old does not give the period of notice required under paragraph (b), then the employer may deduct from wages due to

the employee under this award an amount that is no more than one week's wages for the employee.

(d) Any deduction made under paragraph (c) must not be unreasonable in the circumstances.

29.2 Job search entitlement

(a) Where an employer has given notice of termination to an employee, the employee must be allowed time off without loss of pay of up to one day for the purpose of seeking other employment.

(b) The time off under clause 29.2 is to be taken at times that are convenient to the employee after consultation with the employer.

29.30. Redundancy

Clause 30 amended in accordance with [\[2019\] FWCFCB 2548](#) at [6] and [PR707023](#).

NOTE: Redundancy pay is provided for in the NES. See sections 119 to 123 of the Act.

30.1 Transfer to lower paid duties on redundancy

(a) Clause 30.1 applies if, because of redundancy, an employee is transferred to new duties to which a lower ordinary rate of pay applies.

(b) The employer may:

(i) give the employee notice of the transfer of at least the same length as the employee would be entitled to under section 117 of the Act as if it were a notice of termination given by the employer; or

(ii) transfer the employee to the new duties without giving notice of transfer or before the expiry of a notice of transfer, provided that the employer pays the employee as set out in clause 30.1(c).

(c) If the employer acts as mentioned in clause 30.1(b)(ii), the employee is entitled to a payment of an amount equal to the difference between the ordinary rate of pay of the employee (inclusive of all-purpose allowances and penalty rates applicable to ordinary hours) for the hours of work the employee would have worked in the first role, and the ordinary rate of pay (also inclusive of all-purpose allowances and penalty rates applicable to ordinary hours) of the employee in the second role for the period for which notice was not given.

30.2 Employee leaving during redundancy notice period

(a) An employee given notice of termination in circumstances of redundancy may terminate their employment during the minimum period of notice prescribed by section 117(3) of the Act.

(b) The employee is entitled to receive the benefits and payments they would have received under clause 30 or under sections 119 to 123 of the Act had they remained in employment until the expiry of the notice.

(c) However, the employee is not entitled to be paid for any part of the period of notice remaining after the employee ceased to be employed.

30.3 Job search entitlement

(a) Where an employer has given notice of termination to an employee in circumstances of redundancy, the employee must be allowed time off without loss of pay of up to one day each week of the minimum period of notice prescribed by section 117(3) of the Act for the purpose of seeking other employment.

(b) If an employee is allowed time off without loss of pay of more than one day under clause 30.3(a), the employee must, at the request of the employer, produce proof of attendance at an interview.

(c) A statutory declaration is sufficient for the purpose of clause 30.3(b).

(d) An employee who fails to produce proof when required under clause 30.3(b) is not entitled to be paid for the time off.

(e) This entitlement applies instead of clause 29.2.

Schedule A— Classification Structure and Definitions

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;

Exposure Draft—Real Estate Industry Award 20XX

- 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

Monetary amounts adjusted as a result of AWR 2019 – changes not tracked.

~~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%
	\$	\$	\$	\$	\$
Real Estate Employee Level 1 (Associate Level)	20.43	40.86	30.65	40.86	40.86
After first 12 months of employment at this level	21.56	43.12	32.34	43.12	43.12
Real Estate Employee Level 2 (Representative Level)	22.70	45.40	34.05	45.40	45.40
Real Estate Employee Level 3 (Supervisory Level)	24.97	49.94	37.46	49.94	49.94
Real Estate Employee Level 4 (In-Charge Level)	26.11	52.22	39.17	52.22	52.22

Commented [FWC1]: Minimum weekly rate in cl 14.1 ÷ 38

Commented [FWC2]: Relevant percentage in cl 19.1 and 25.3

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				
	100%	200%	150%	200%	200%
	\$	\$	\$	\$	\$
Real Estate Employee Level 1 (Associate Level)	25.54	51.08	38.31	51.08	51.08
After first 12 months of employment at this level	26.95	53.90	40.43	53.90	53.90
Real Estate Employee Level 2 (Representative Level)	28.38	56.76	42.57	56.76	56.76
Real Estate Employee Level 3 (Supervisory Level)	31.21	62.42	46.82	62.42	62.42
Real Estate Employee Level 4 (In-Charge Level)	32.64	65.28	48.96	65.28	65.28

Commented [FWC3]: (Minimum weekly rate ÷ 38) in cl 14.1 + 25% casual loading in cl 11.3(a)

Commented [FWC4]: Relevant percentage in cl 19.1 and 25.3

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 14.4. Adult rates apply from 21 years of 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%
	\$	\$	\$	\$	\$
Real Estate Employee Level 1 (Associate Level)—first 12 months of employment at this level					
Under 19 years	12.26	24.52	18.39	24.52	24.52
19 years	14.30	28.60	21.45	28.60	28.60
20 years	16.34	32.68	24.51	32.68	32.68
Real Estate Employee Level 1 (Associate Level)—after first 12 months of employment at this level					
Under 19 years	12.94	25.88	19.41	25.88	25.88
19 years	15.09	30.18	22.64	30.18	30.18
20 years	17.25	34.50	25.88	34.50	34.50
Real Estate Employee Level 2 (Representative Level)					
Under 19 years	13.62	27.24	20.43	27.24	27.24
19 years	15.89	31.78	23.84	31.78	31.78
20 years	18.16	36.32	27.24	36.32	36.32
Real Estate Employee Level 3 (Supervisory Level)					
Under 19 years	14.98	29.96	22.47	29.96	29.96
19 years	17.48	34.96	26.22	34.96	34.96
20 years	19.97	39.94	29.96	39.94	39.94

Commented [FWC5]: Minimum weekly rate in cl 14.1 by applicable percentage in cl 14.4, divided by 38

Commented [FWC6]: Relevant percentage in cl 19.1 and 25.3

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Real Estate Employee Level 4 (In-Charge Level)					
Under 19 years	15.66	31.32	23.49	31.32	31.32
19 years	18.27	36.54	27.41	36.54	36.54
20 years	20.88	41.76	31.32	41.76	41.76

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.

	Junior hourly rate—ordinary hours	Public holidays
	% of junior casual hourly rate	
	100%	200%
	\$	\$
Real Estate Employee Level 1 (Associate Level)—first 12 months of employment at this level		
Under 19 years	15.33	30.66
19 years	17.88	35.76
20 years	20.43	40.86
Real Estate Employee Level 1 (Associate Level) —after first 12 months of employment at this level		
Under 19 years	16.18	32.36
19 years	18.86	37.72
20 years	21.56	43.12
Real Estate Employee Level 2 (Representative Level)		
Under 19 years	17.03	34.06
19 years	19.86	39.72
20 years	22.70	45.40
Real Estate Employee Level 3 (Supervisory Level)		
Under 19 years	18.73	37.46
19 years	21.85	43.70
20 years	24.96	49.92

Commented [FWC7]: Minimum weekly rate in cl 14.1 by applicable percentage in cl 14.4, divided by 38 + 25% casual loading in cl 11.3(a)

Commented [FWC8]: See cl 25.3

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Real Estate Employee Level 4 (In-Charge Level)		
Under 19 years	19.58	39.16
19 years	22.84	45.68
20 years	26.10	52.20

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Schedule C—Summary of Monetary Allowances

Monetary amounts in this clause adjusted as a result of AWR 2019 – changes not tracked.

See clause 17—Allowances [for full details of allowances payable under this award.](#)

C.1 Expense-related allowances

C.1.1 The following expense-related allowances will be payable to employees in accordance with clause 17—Allowances:

Allowance	Clause	\$	Payable
Motor vehicle allowance:			
Vehicle up to five 5 years of age:	17.2(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 5 years of age	17.2(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)

Exposure Draft—Real Estate Industry Award 20XX

Allowance	Clause	\$	Payable
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)
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	17.3(a)	0.78	per km
Motor cycle allowance—to a maximum of 400 kilometres per week	17.5	0.26	per km
Mobile telephone allowance—maximum phone plan payable	17.7	100	per month (reimbursement see clause 17.7(a)(ii))

C.1.2 Adjustment of expense-related allowances

- (a) At the time of any adjustment to the standard rate, each expense-related allowance will be increased by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.
- (b) The applicable index figure is the index figure published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index (Cat No. 6401.0), as follows:

Allowance	Applicable Consumer Price Index figure
Motor vehicle allowance	Private motoring sub-group
Motor cycle allowance	Private motoring sub-group
Mobile telephone allowance	Telecommunication equipment and services sub-group

Schedule D—Supported Wage System

Monetary amounts in this clause adjusted as a result of AWR 2019 – changes not tracked.

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

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

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D.4.2 Provided that the minimum amount payable must be not less than **\$87** 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 SWS 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 SWS.

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 \$87 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—Agreement to Take Annual Leave in Advance

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 F—Agreement to Cash Out Annual Leave

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 G—Agreement for Time Off Instead of Payment for Overtime

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___

Schedule H—Part-day Public Holidays

- H.1** This schedule operates where this award otherwise contains provisions dealing with public holidays that supplement the [NES](#).
- H.2** Where a part-day public holiday is declared or prescribed between 7.00 pm and midnight on Christmas Eve (24 December in each year) or New Year's Eve (31 December in each year) 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 H.2(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 H.2(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.
- H.3** This schedule is not intended to detract from or supplement the [NES](#).