



Australian Government

Fair Work

OMBUDSMAN

11 April 2014

The Associate to Hon Justice Iain Ross AO
President
Fair Work Commission
11 Exhibition Street
Melbourne Victoria 3000

By email: amod@fwc.gov.au

Dear Associate

FWO Research for Modern Award Review on base rates of pay, overtime and penalties

I refer to the 4 Yearly Review of Modern Awards that is currently taking place by the Fair Work Commission (**the Commission**).

I also refer to the Fair Work Ombudsman's (**the FWO**) outline of submissions filed on 3 February 2014 where in it was anticipated that the FWO would seek to assist the Commission in respect of the expression of base rates of pay, penalties and overtime in modern awards.

The FWO presents the Commission with the following papers:

- *FWO Research paper on the expression of rates of pay, overtime and penalty rated in modern awards*, attaching a proposed exemplar pay rates table for inclusion in modern awards; and
- *FWO – Key Operational Statistics*, which contains data that may be relevant to the Review.

If you have any questions in respect of this correspondence, please feel free to contact me.

Yours sincerely

Janine Webster
Chief Counsel

Modern Award Review

RESEARCH PAPER ON THE EXPRESSION OF RATES OF PAY, OVERTIME AND PENALTY RATES IN MODERN AWARDS

Overview

1. This Research Paper sets out the research and findings of the Office of the Fair Work Ombudsman (**FWO**) in relation to the expression of rates of pay, overtime and penalty rates in modern awards.
2. In providing this research, the FWO seeks to assist the Fair Work Commission (**Commission**) achieve the modern award objectives, and in particular, the need to ensure a simple and easy to understand modern awards system (subsection 134(1)(g) of the *Fair Work Act 2009* (**FW Act**)).
3. The FWO has conducted research into how overtime, penalty rates and base rates of pay are expressed in modern awards and has found that:
 - 3.1 with respect to overtime and penalty rates, many modern awards do not clearly state:
 - the times at which overtime and penalties are to apply;
 - how overtime and penalties interact with the casual loading; and
 - whether overtime is calculated on a weekly or daily basis.
 - 3.2 with respect to base rates of pay:
 - there is no consistent method for expressing rates of pay in modern awards; and
 - many modern awards require calculations to be performed to derive an hourly rate of pay.
4. This Research Paper outlines some of the key findings of the FWO's research and proposes that a solution to some of the interpretational difficulties in modern awards outlined above could be addressed in three ways:
 - 4.1 the inclusion of pay rates tables in modern awards specifying a monetary amount for:
 - overtime;
 - penalty rates; and
 - base hourly rates of pay;
 - 4.2 the inclusion of illustrative examples in modern awards where there is particular complexity; and/or
 - 4.3 varying the clauses of modern awards so as to bring clarity and certainty for modern award users where appropriate.

5. The FWO also considers the expression of allowances as monetary amounts will also assist in ensuring modern awards are easy to understand and apply.

Overtime and penalty rates

Reliance on overtime and penalty rates in Australia

6. A proportion of the Australian workforce work hours that attract overtime and penalty rates. A significant number of these workers are likely to be dependent upon the application of modern award terms relating to overtime and penalties. Accordingly, it is important that modern clauses relating to overtime and penalties are clear.
7. The Australian Bureau of Statistics' (**ABS**) most recent data on working time arrangements¹ indicates that of the 9.5 million employees who were single jobholders in November 2012:
 - 7% usually worked six days a week;
 - a further 4% usually worked seven days a week;
 - 14% usually worked on Saturdays;
 - 8% usually worked on Sundays; and
 - 29% worked on both weekdays and weekends.
8. Excluding owner managers of incorporated enterprises:
 - 34% of persons who were employees in their main job usually worked extra hours or overtime in their main job in November 2012; and
 - 7% usually worked the majority of their hours between 7.00pm and 7.00am in all of their jobs.
9. ABS data from 2012 also indicates that overtime payments accounted for 7.84% of average weekly cash earnings across all industries in Australia.²
10. Research published for the 2013/2014 Annual Wage Review indicates that 52% of non-public sector organisations, in some way, based the pay of at least one of their employees on awards.³ Further, a majority of award-reliant organisations reported their employees working outside standard operating hours.⁴

Analysis of overtime and penalty rate clauses in modern awards

11. The FWO has conducted an analysis of all 122 modern awards in respect of ordinary rates, overtime and penalty clauses to identify whether certain entitlements are

¹ Australian Bureau of Statistics, Cat. 6342.0, *Working Time Arrangements*, November 2012.

² Australian Bureau of Statistics, Cat. 6306.0, *Employee Earnings and Hours, Australia*, May 2012.

³ Research Report 6/2013, Workplace Research Centre, University of Sydney in collaboration with ORC International, pp.13-14.

⁴ *Ibid*, p.43.

expressly stated. This analysis has also been informed by the escalation of complex technical enquiries concerning overtime and penalty rate clauses in modern awards.⁵

12. The FWO's analysis revealed that there are opportunities for modern awards to be clearer in respect of:
 - A. stating when overtime and penalty rates apply;
 - B. stating whether overtime is calculated on a daily or weekly basis;
 - C. stating how the casual loading interacts with overtime and/or penalty rates;
 - D. the location/labelling of particular entitlements within modern awards; and
 - E. stating whether annual leave loading or the applicable penalty rate should apply.

Each of these key themes is discussed below.

A. *Stating when overtime and penalty rates apply*

13. Given the reliance of the Australian workforce on penalty rates as outlined above, the application of modern awards is assisted where modern awards clearly express entitlements to overtime and penalties.
14. Twelve modern awards⁶ clearly state the hours for which overtime are payable for all employees covered by the award. Therefore, there is an opportunity for overtime provisions in approximately 85% of modern awards to be made clearer. Five modern awards⁷ were found to clearly state the application of penalty rates for all employees covered by the award. Therefore, there is an opportunity for clauses in respect of penalties to be made clearer in 85% of modern awards.
15. An example of an overtime clause considered to clearly state when overtime is payable is clause 22.1 of the *Horse and Greyhound Training Award 2010* [MA000008] which is set out below:

'All work performed in excess of or outside the ordinary hours prescribed by clause 20 – Ordinary hours of work and rostering, of this award must be paid at 150% of the relevant minimum wage calculated hourly for the first three hours and 200% for the rest of the overtime.'

⁵ This analysis considered complex technical enquiries escalated internally and enquiries referred to the FWO's Practitioner Assist area, which engages with industry parties to resolve areas of uncertainty and respond to complex enquiries. These technical enquiries relate to a range of issues such as the application and operation of awards and other Fair Work instruments. These enquiries were analysed over a sample period of 12 months, from 1 December 2012 to 30 November 2013.

⁶ Note: 6 awards do not contain overtime provisions.

⁷ Note: 13 awards do not contain penalty rate provisions.

16. This clause is considered to be clear as it specifies that overtime is work performed '*in excess of or outside*' of ordinary hours, directs the award user to the ordinary hours clause and sets out the rates clearly.
17. Illustrative examples of overtime and penalty rate clauses from modern awards which could be made clearer in setting out entitlements to overtime and penalties are contained in **Appendix A**.

B. Stating whether overtime is calculated on a daily or weekly basis

18. A number of enquiries to the FWO arise from confusion about whether overtime is calculated on a daily or weekly basis. Some modern awards, such as the *General Retail Industry Award 2010* [MA000004] at clause 29.2(d) clearly state that overtime is calculated on a daily basis. However, 55 of the modern awards make no reference to whether overtime is calculated on a weekly or daily basis.⁸
19. The absence of an express clause is a potential cause of confusion for those employees who work in excess of both the daily and weekly maximum hours in one week. This is because it is not always clear whether the limitation for the payment of overtime for the first two or three hours (depending on the wording of the clause) commences on the day in which the daily maximum is exceeded, or whether the limitation commences again when the weekly maximum is exceeded.
20. Whilst a number of modern awards state that in calculating overtime '*each day is to stand alone*', there are difficulties in understanding what that phrase means for those without a workplace relations background. In particular, it is not clear what application this phrase has to the limitation of overtime for those hours worked in excess of the daily or weekly maximum. Accordingly, many modern awards may benefit from greater clarity as to how overtime is to be calculated.
21. Illustrative examples of clauses from modern awards which could be made clearer in respect of expressing whether overtime is calculated on a weekly or daily basis are contained in **Appendix B**.

C. Stating how the casual loading interacts with overtime and/or penalty rates

22. In the context of casual employment, modern award users often require assistance as to whether overtime and/or penalty rates are paid on the:
 - base rate of pay;
 - base rate of pay with the casual loading added separately ('cumulative' calculation); or

⁸ Note: These 55 awards contain overtime entitlements requiring a determination of whether overtime is calculated on a daily or weekly basis. Of the remaining awards, 6 do not contain overtime provisions, 8 contain overtime provisions but determining whether overtime is calculated on a daily or weekly basis is not relevant, 51 contain a reference to whether overtime is calculated on a daily or weekly basis (including language such as 'each day stands alone') and for 2 awards provisions vary for different types of employees.

- casual loaded rate of pay ('compounding' calculation).
23. Seventeen modern awards⁹ expressly state how overtime for casual employees is to be calculated and 20 modern awards¹⁰ clearly state how penalty rates for casual employees are to be calculated. Examples of modern awards that were found to be clear include:
- the *Social, Community, Home Care and Disability Services Industry Award 2010* [MA000100], which at clause 26.2 states that '*the rates prescribed in clause 26.1 will be in substitution for and not cumulative upon the casual loading prescribed in clause 10.4(b)*';
 - the *Meat Industry Award 2010* [MA000059] which at clause 15.11 states that '*A casual employee who works overtime does not receive the loading set out in clause 15.9(b) but receives, instead, the overtime penalty rates set out in clause 36—Overtime for the period worked*';
 - the *Timber Industry Award 2010* [MA000073] which at clause 12.2(b) states that '*a casual who works in excess of the ordinary hours fixed for weekly employees on any day will be paid at the appropriate overtime rate....based on their ordinary rate of pay (including the loading provided for in clause 12.2(a))*'; and
 - the *Hospitality Award 2010* [MA000009] which at clause 32.1 lists the penalty rates for casuals in a Table and clearly outlines that the percentages are inclusive of the casual loading.
24. Express clauses such as those outlined above avoid ambiguity about the interaction of the casual loading and other entitlements. The reference to '*cumulative*' in the *Social, Community, Home Care and Disability Services Industry Award 2010* and many other modern awards, however, may not be understood by all employers and employees. Providing an explanation of what '*cumulative*' means and how to carry out the calculation by way of illustrative example may make the modern award easier to apply.
25. Illustrative examples of some of the clauses from modern awards which could more clearly express the entitlement for overtime and penalty rates for casual employees are contained in **Appendix C**.

D. The location/labelling of particular entitlements

26. The headings of some modern award clauses are not necessarily reflective of the contents of the clause. This makes it difficult for readers of modern awards to easily navigate and locate the relevant provisions. Some illustrative examples of some clauses of modern awards where a clearer heading could be inserted are contained in **Appendix D**.

⁹ Note: Not applicable for 20 awards.

¹⁰ Note: Not applicable for 15 awards. One further award clearly states the interaction for some employees only.

E. Stating whether the annual leave loading or applicable penalty rate should apply

27. Modern awards will also be made simpler and clearer if they express how clauses that provide for the payment of the higher of either the annual leave loading or applicable penalty rate for a period of annual leave are to be applied.
28. This issue relates to 59 modern awards which provide for payment of a loading for a period of annual leave on top of the minimum weekly wage of either the annual leave loading amount of 17.5%, or the applicable weekend penalty or shift penalty, whichever is higher.¹¹
29. In determining whether to pay the annual leave loading or the applicable penalty rate, it is not clear whether the comparison is to consider the two entitlements:
- calculated on the basis of each day of annual leave being treated separately; or
 - whether the entire period of leave taken as annual leave should be considered.
30. Illustrative examples of clauses that could be made clearer in this respect are contained in **Appendix E**.

Summary of the FWO’s findings in respect of the expression of rates of pay, overtime and penalty rates in modern awards

31. The complete results of the FWO’s analysis into all 122 modern awards in respect of the expression of rates of pay, overtime and penalty rate clauses of modern awards are contained in **Appendix F**.

Hourly rates of pay and allowances

32. There is no consistent method for the expression of rates of pay across the 122 modern awards. The table below shows the number of modern awards containing certain methods of payment.¹²

Method of payment	Number of awards
Weekly rate only	54
Weekly and hourly rate ¹³	37
Weekly and annual rate ¹⁴	6

¹¹ Thirty one of the 59 modern awards affected by this issue identified contain provisions that substitute annual leave loading for penalty rates for weekend penalties, where the penalty rate is higher. A further 28 modern awards contain a similar provision for shift workers in respect of shift penalties.

¹² Note: only certain payment methods are included in this table. Other payment methods include daily rates, piece rates and payment for the performance of a task. Awards may also contain combinations of these payment methods and/or different payment methods applying to different employees, meaning that there is overlap in the different methods of payment within awards.

¹³ Number of awards with a weekly and hourly rate which apply to the same employees.

¹⁴ Number of awards with a weekly and annual rate which apply to the same employees.

Method of payment	Number of awards
Annual rate only	9

33. The [Research Report 6/2013 - Award Reliance](#)¹⁵ highlights that 73% of all award reliant employees are employed on a part-time or casual basis. Typically, part-time and casual employees are paid hourly rates of pay. Currently such users of modern awards that only specify a weekly or annual rate of pay are unable to simply look at a modern award to determine the relevant hourly rate of pay.
34. The absence of hourly rates in some modern awards can lead to user error in interpreting an award to determine the applicable hourly rate of pay. In particular it is noted that:
- 34.1 for those modern awards that only specify a weekly or annual rate of pay, there is an assumption that users understand how the calculation is to be conducted to obtain the hourly rate of pay;
- 34.2 it is unclear how rounding is to be applied when calculating an hourly rate of pay as modern awards do not typically provide rounding rules; and
- 34.3 in the absence of rounding rules, confusion can arise where a modern award contains both weekly and hourly rates of pay as the hourly rate multiplied by the maximum number of ordinary hours in the modern award will not always equal the weekly amount specified in the modern award.¹⁶
35. Issues with rounding also arise from how allowances are expressed in modern awards. Many modern awards currently express allowances as a percentage of the weekly rate and would benefit from the expression of allowances as monetary rates, wherever this is possible.

Proposed approach

36. Arising from its analysis, the FWO has identified a number of instances where modern awards could be made clearer with respect to the expression of overtime, penalty rates, hourly rates and allowances.
37. To assist in making modern awards easier to understand, the Commission may wish to consider including a pay rates table at the beginning of each modern award which will specify a dollar amount for base hourly rate of pay, casual rate of pay, overtime and penalty rates and which specifies a rounding rule for the rates in the table. The FWO has developed an exemplar pay rates table which could be adapted for inclusion in each modern award (see **Appendix G**¹⁷).

¹⁵ [Research Report 6/2013 - Award Reliance](#), December 2013.

¹⁶ This issue affects all of the 37 modern awards that express both an hourly and weekly rate of pay.

¹⁷ Illustrative example based on a modern award with 38 ordinary hours per week.

38. Similarly, wherever possible, allowances in modern awards could be expressed in monetary amounts rather than solely as percentage amounts. For ease of reference, these allowances could be outlined in the same section of the modern awards as the proposed pay rates tables.
39. The FWO acknowledges that the proposal to include pay rates tables in modern awards will not necessarily resolve all of the identified instances of uncertainty. Accordingly, the FWO anticipates that some of the uncertainties identified in **Appendix F** may only be resolved during the Award Stage of the Review. The FWO proposes that the findings of its research contained in this Research Paper could be published on the Commission's website to enable the parties and the Commission to seek to ensure that clauses of modern awards are as clear as possible during the Award Stage of the Review for each of the affected modern awards.
40. The Commission may also wish to consider the inclusion of illustrative examples in modern awards to clarify some of the uncertainties identified in **Appendix F** regarding the application of overtime and penalty rate provisions, similar to the examples used in clause 28 of the *Hospitality Industry – Accommodation, Hotels, Resorts and Gaming Award 1998* (AP783479).

Janine Webster
Chief Counsel

APPENDIX A – Stating when overtime and penalty rates apply

Illustrative examples from the following modern awards:

1. *Clerks – Private Sector Award 2010* [MA000002]
2. *Restaurant Industry Award 2010* [MA000119]
3. *Security Services Industry Award 2010* [MA000016]
4. *Fast Food Industry Award 2010* [MA000003]

Example 1: Clerks – Private Sector Award 2010 [MA000002]

25.1 Weekly hours of work—day workers

- (a) *The ordinary hours of work for day workers are to be an average of 38 per week but not exceeding 152 hours in 28 days, or an average of 38 over the period of an agreed roster cycle.*
- (b) *The ordinary hours of work may be worked from 7.00am to 7.00pm Monday to Friday and from 7.00am to 12.30pm Saturday. Provided that where an employee works in association with other classes of employees who work ordinary hours outside the spread prescribed by this clause, the hours during which ordinary hours may be worked are as prescribed by the modern award applying to the majority of the employees in the workplace.*
- (c) *Not more than 10 hours exclusive of meal breaks (except if paid for at overtime rates) are to be worked in any one day.*

[...]

27.1 Payment for working overtime

- (a) *Employees working overtime:*
 - (i) *within the hours fixed in clause 25 –Ordinary hours of work (other than shiftworkers), of this award but in excess of the hours fixed for an ordinary week’s work; or*
 - (ii) *outside the hours fixed in clause 25 of this award;**must be paid time and a half for the first two hours and double time thereafter calculated on a daily basis.*

[...]

27.2 Payment for working Saturdays and Sundays

- (a) *Work within the spread of ordinary hours on Saturday will be paid at the rate of time and a quarter.*
- (b) *All work done on a Sunday must be paid for at the rate of double time.*
- (c) *An employee required to work on a Sunday is entitled to not less than four hours’ pay at penalty rates provided the employee is available for work for four hours.*

A number of uncertainties have been identified in relation to the above provisions, including, for example, the following:

- **Saturday work**

Clause 27.2(a) provides that work within the spread of ordinary hours on Saturday is paid at the rate of time and a quarter. This provision does not specify that work within the spread of ordinary hours, but which are in excess of the number of ordinary hours, must be paid at overtime rates. Read together, clauses 25.1 and 27.1(a) provide for this, however the absence of any reference to this overtime entitlement in the clause entitled ‘*Payment for working Saturdays and Sundays*’ has the capacity to cause confusion.

- **Ordinary hours of work for day workers**

Clause 25.1(b) provides that where an employee works with other employees who work ordinary hours outside the spread prescribed by clause 25, the hours during which ordinary hours may be worked are those provided in the modern award applying to the majority of the employees in the workplace. This may cause uncertainty, for example in relation to the following:

- Firstly, it may not be clear to employees and employers whether only the **hours** from another modern award may be applied, or whether the **days** on which ordinary hours can be worked can also be applied; and/or
- If ordinary hours can be applied on a Sunday, it is not clear what payment an employee would be entitled to. They would not be entitled to overtime payments as they are working ordinary hours. The Sunday entitlement in clause 27.2 is an overtime entitlement, as Sunday is outside the spread of hours provided in the award. It is not clear if this entitlement is intended to be read as a penalty in this situation, or if no additional payment applies.

Example 2: Restaurant Industry Award 2010 [MA000119]

13. Casual employment

13.1 *A casual employee is an employee engaged as such and must be paid a casual loading of 25%. The casual loading is paid as compensation for annual leave, unpaid personal/carer's leave, notice of termination, redundancy benefits and the other entitlements of full-time or part-time employment.*

[...]

33. Overtime

33.1 Requirement to pay overtime rates

(a) Full-time and part-time employees are paid at overtime rates for any work done outside of the spread of hours or rostered hours set out in clause 31—Hours of work.

(b) In addition, part-time employees are paid at overtime rates in the circumstances specified in clause 12.7.

Clause 13.1 of the above modern award does not specify ordinary hours for casual employees. Further clause 33.1(a) provides an overtime entitlement to full time and part time employees but does not mention casuals. The FWO suggests that the Commission could remove this uncertainty by expressly stating whether or not casuals are entitled to overtime under this modern award.

The FWO's analysis of 122 modern awards revealed that only 32 modern awards¹⁸ clearly state whether casuals are entitled to overtime. In assessing whether a modern award was clear, clauses that referenced casuals working '*ordinary time*' were not considered to clearly state whether an entitlement to overtime exists. This creates uncertainty for modern award users and could easily be clarified by the including a clause expressly stating whether or not casuals are entitled to overtime.

¹⁸ Note: Not applicable for eight awards.

Example 3: Security Services Industry Award 2010 [MA000016]

Part 5—Hours of Work and Related Matters

21. Ordinary hours of work and rostering

21.1 Ordinary hours and roster cycles

(a) The ordinary hours of work are 38 hours per week or, where the employer chooses to operate a roster, an average of 38 hours per week to be worked on one of the following bases at the discretion of the employer:

- (i) 76 hours within a roster cycle not exceeding two weeks;*
- (ii) 114 hours within a roster cycle not exceeding three weeks;*
- (iii) 152 hours within a roster cycle not exceeding four weeks; or*
- (iv) 304 hours within a roster cycle not exceeding eight weeks.*

[...]

23. Overtime

23.1 *Reasonable overtime is provided for in the NES.*

23.2 *An employee must not be required to work more than 14 hours (including breaks to which the employee is entitled under this award).*

23.3 Overtime rates

Where an employee works overtime the employer must pay to the employee the ordinary time rate for the period of overtime together with a loading as follows:

For overtime worked on	Loading payable in addition to ordinary time rate
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	%
<i>Monday to Friday—first 2 hours</i>	<i>50</i>
<i>Monday to Friday—thereafter</i>	<i>100</i>
<i>Saturday—first 2 hours</i>	<i>50</i>
<i>Saturday—thereafter</i>	<i>100</i>
<i>Sunday</i>	<i>100</i>
<i>Public holiday</i>	<i>150</i>

23.4 *Where a period of overtime commences on one day and continues into the following day, the portion of the period worked on each day attracts the loading applicable to that day.*

[...]

Clause 21.1 provides ordinary hours of 38 per week and does not specify a span or daily maximum of hours allowable. Clause 23.3 simply states that an employee working overtime receives an ordinary time rate with a loading. There is no further explanation of what overtime is, nor specific reference to what an ordinary time rate is (i.e. whether it would include a shift loading). This expression of overtime requires a general understanding of overtime, as well as ordinary hours, ordinary rate and its interaction with loadings. Overtime is also not expressed clearly as being calculated on a daily or weekly basis.

Example 4: Fast Food Industry Award 2010 [MA000003]

25. Hours of work

25.2. Ordinary hours

The ordinary hours of work are an average of 38 per week over a period of no more than four weeks.

[...]

25.3. Maximum hours on a day

An employee may be rostered to work up to a maximum of 11 ordinary hours on any day.

[...]

25.5. Penalty rates

(a) Evening work Monday to Friday

- (i) A loading of 10% will apply for ordinary hours of work within the span of hours between 9.00pm and midnight, and for casual employees this loading will apply in addition to their 25% casual loading.*
- (ii) A loading of 15% will apply for ordinary hours of work after midnight, and for casual employees this loading will apply in addition to their 25% casual loading.*

(b) Saturday work

A loading of 25% will apply for ordinary hours of work within the span of hours on a Saturday, and for casual employees an additional 25% on top of the casual rate.

(c) Sunday work

- (i) A 50% loading will apply for all hours of work on a Sunday for full-time and part-time employees.*
- (ii) A 75% loading will apply for all hours of work on a Sunday for casual employees, inclusive of the casual loading.*

[...]

26. Overtime

The rate of overtime shall be time and a half for the first two hours on any one day and at the rate of double time thereafter, except on a Sunday which shall be paid for at the rate of double time and on a Public Holiday which shall be paid for at the rate of double time and a half. Casual employees shall be paid 275% on a Public Holiday.

26.1

An employee shall be paid overtime for all work as follows:

(a) In excess of:

- (i) 38 hours per week or an average of 38 hours per week averaged over a four week period; or*
- (ii) five days per week (or six days in one week if in the following week ordinary hours are worked on not more than four days); or*
- (iii) eleven hours on any one day; or*

(b) Before an employee's rostered commencing time on any one day; or

(c) After an employee's rostered ceasing time on any one day; or

- (d) *Outside the ordinary hours of work; or*
- (e) *Hours worked by part-time employees in excess of the agreed hours in clause 12.2 or as varied under clause 12.3.*

26.2 *Where an employee works overtime on a Sunday and that work is not immediately preceding or immediately following ordinary hours, then that employee must be paid double time with a minimum payment of four hours at such rate.*

26.3. Time off instead of payment

By mutual agreement the rate for overtime may be time off in lieu of overtime provided that:

- (a) *Time off shall be calculated at the penalty equivalent;*
- (b) *The employee is entitled to a fresh choice of payment or time off on each occasion overtime is worked;*
- (c) *Time off must be taken within one calendar month of the working of the overtime, or it shall be paid out.*

26.4. Reasonable overtime

An employer may require an employee other than a casual to work reasonable overtime in accordance with the provisions of this clause.

An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours are unreasonable having regard to:

- (a) *any risk to employee health and safety;*
- (b) *the employee's personal circumstances including any family responsibilities;*
- (c) *the needs of the workplace or enterprise;*
- (d) *the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and*
- (e) *any other relevant matter.*

[...]

30.3. Payment for work on a public holiday

Work on a public holiday must be compensated by payment at the rate of an additional 150%.

The uncertainties in interpreting overtime and penalty provisions from the above clauses include the following:

- **Sunday work**

Clause 25.5(c)(i) provides that a 50% loading will apply for **all hours** worked on a Sunday for full-time and part-time employees. Clause 26 provides that overtime on a Sunday will be paid at the rate of double time. It would appear that work on a Sunday is paid at double time in the circumstances set out in clause 26.1 (overtime) and at all other times a loading of 50% applies (penalty). However, the fact that overtime might be payable for some hours worked on Sunday may not be immediately clear to employees and employers, given the reference to 'all hours' on Sundays attracting a 50% loading in clause 25.5(c).

- **Evening work Monday to Friday**

Clause 25.5(a)(ii) provides that a loading of 15% will apply for ordinary hours of work after midnight. The provision does not provide a ceasing time for this loading. Further, there is no spread of ordinary hours in the award. It is therefore not clear when this penalty ceases to apply.

- **Ordinary hours of work**

Clause 26.1 sets out circumstances in which overtime must be paid. These include where work is in excess of five days per week (or six days if not more than four days are worked the following week). Clause 25, which sets out the ordinary hours, does not mention this limitation. An employer or employee trying to determine how ordinary hours are regulated by the modern award would therefore need to look in the overtime clause as well as the ordinary hours clause. This causes uncertainty about the maximum ordinary hours and how they can be arranged. A potential solution would be to for all ordinary hours to be outlined in one clause which the overtime clause could refer to.

- **Overtime outside the hours of work**

Clause 26.1(d) provides that overtime must be paid for work which is '*outside the ordinary hours of work*'. It is unclear what this reference is intended to cover, as daily and weekly maximum hours and work outside an employee's rostered hours are mentioned elsewhere in the clause, and there is no spread of ordinary hours contained in the award. This creates uncertainty about when overtime is intended to apply. It would be clearer if all ordinary hours were outlined in one clause and the overtime clause just referred to that clause.

- **Whether 275% loading for casuals for working a public holiday is overtime or penalty**

Clause 26 is titled '*Overtime*' and states that casual employees shall be paid 275% for work on a public holiday. However, clause 26.4 specifically excludes casual employees from working overtime. Therefore, these two clauses appear to contradict each other. Clause 30 then provides that employees are entitled to a penalty of 150% for work on a public holiday but does not state whether this penalty is to apply to casual employees. It is therefore unclear what rate casuals are entitled to be paid for working a public holiday.

APPENDIX B– Stating whether overtime is calculated on a daily or weekly basis

Illustrative examples from the following modern awards:

1. *Hair and Beauty Award* [MA000005]
2. *Joinery and Building Trades Award 2010* [MA000029]
3. *Meat Industry Award 2010* [MA000059]

Example 1: Hair and Beauty Industry Award 2010 [MA000005]

28.2 Ordinary hours	
(a) <i>Ordinary hours must not exceed an average of 38 per week and may be worked within the following spread of hours:</i>	
Days	Spread of hours
<i>Monday to Friday, inclusive</i>	<i>7.00am – 9.00pm</i>
<i>Saturday</i>	<i>7.00am – 6.00pm</i>
<i>Sunday</i>	<i>10.00am – 5.00pm</i>
31.2 Overtime and penalty rates	
(a) <i>Overtime hours worked in excess of the ordinary number of hours of work prescribed in clause 28.2 are to be paid at time and a half for the first three hours and double time thereafter.</i>	

Clause 31.2(a) does not expressly state whether the payment of overtime of time and a half for the first three hours applies on a daily or weekly basis.

For example, a full-time employee usually works their 38 hours for the week over 5 days, Sunday to Thursday. They usually finish work at 4.00pm on Thursday but this week they work 3 hours of overtime and finish work at 7.00pm. This is paid at time and a half. In total they have worked 41 hours for the week. The employee is then asked to work on Friday as well to cover someone else.

All work on Friday will be overtime as the employee has already exceeded 38 hours for the week. However, it is not immediately clear whether the first three hours of overtime begins again on Friday or whether double time applies, as the employee has already worked three hours at time and a half the day before. It would assist those employers and employees applying the above provisions if the Commission could clarify this issue.

Example 2: Joinery and Building Trades Award 2010 [MA000029]

28. Ordinary hours

28.1 *Except as provided elsewhere in this award, the ordinary hours of work for an employee are 38 or an average of 38 hours per week.*

28.2 Day workers

(a) *Subject to clause 31—Alternative working arrangement, ordinary hours for a day worker must be worked as eight hours per day, between 6.00 am and 7.00 pm Monday to Friday, over a 20 day four week cycle, with 0.4 of one hour of each day worked accruing as a paid rostered day off in each cycle.*

[...]

30. Overtime

[...]

30.2 Payment for working overtime

(a) *Except as provided for in clauses 30.6 and 30.7, for all work done outside of ordinary hours by a day worker the overtime rate is 150% for the first two hours and 200% thereafter and for all work done outside of ordinary hours by a shiftworker the overtime rate is 200%.*

(b) *Overtime work performed by a shiftworker employed on the second or third shifts of a day when two or three shifts are worked must be paid for at the rate of 200%.*

Clause 30.2(a) does not expressly state whether the payment of overtime for the 'first two hours' applies on a daily or weekly basis. Therefore, the overtime entitlement of employees who work in excess of both the daily and weekly maximum ordinary hours in any given week is unclear. For example, an employee may work in excess of the daily maximum on one day and exceed the weekly maximum the following day. It may not be clear in cases such as these whether the payment of overtime for the 'first two hours' should start again on the second day.

Example 3: Meat Industry Award 2010 [MA000059]

31. Hours of work

31.1 *Maximum weekly hours and requests for flexible working arrangements are provided for in the NES.*

31.2 Ordinary hours of work

- (a)** *The ordinary hours of work are not to exceed 38 per week or an average of 38 per week not exceeding 152 hours in 28 days.*
- (b)** *The ordinary hours of work are to be worked continuously at the discretion of the employer, except for meal breaks or other breaks prescribed in the award.*
- (c)** *The maximum number of ordinary hours which may be worked on any day or shift must not exceed 10 hours.*
- (d)** *Any hours worked outside the spread of hours listed must be paid at overtime rates.*
- (e)** *Notwithstanding the spread of hours set out in the tables in this clause, cleaners may be employed on ordinary hours between 6.30 am and midnight in any establishment under this award.*

[...]

36. Overtime

36.1 Entitlement to overtime and payment

- (a)** *All time worked outside ordinary working hours as prescribed in clause 31 – Hours of work (or in the case of a shiftworker, outside the hours rostered as ordinary shiftwork hours in accordance with clause 34 - Rostering) will be deemed to be overtime and be paid for at time and a half for the first three hours and double time thereafter.*
- (b)** *All overtime worked on a Sunday in meat processing establishments must be paid at double time with a minimum payment of four hours.*

Clause 36.1 of the above award provides that all time worked outside ordinary working hours will be deemed to be overtime and paid accordingly. Where an employee works in excess of the daily maximum one day and exceeds the weekly maximum on the next day, it is not clear whether the payment of overtime for the first three hours should start again on the second day.

APPENDIX C – Stating how the casual loading interacts with overtime and/or penalty rates

Illustrative examples from the following modern awards are set out below:

1. *Security Services Industry Award 2010* [MA000016]
2. *Manufacturing and Associated Industries and Occupations Award 2010* [MA000010]
3. *Higher Education – General Staff Award 2010* [MA000007]

Example 1: Security Services Industry Award 2010 [MA000016]

<p>10.5 Casual employees</p> <p>[...]</p> <p>(b) Casual loading</p> <p><i>In addition to the ordinary hourly rate and penalty rates payable for shift, weekend and public holiday work payable to full-time employees, casual employees will be paid a loading of 25% of the ordinary hourly rate for the classification in which they are employed.</i></p> <p>[...]</p> <p>23.3 Overtime rates</p> <p><i>Where an employee works overtime the employer must pay to the employee the ordinary time rate for the period of overtime together with a loading as follows:</i></p>	<table border="1"><thead><tr><th>For overtime worked on %</th><th>Loading payable in addition to ordinary time rate</th></tr></thead><tbody><tr><td><i>Monday to Friday – first 2 hours</i></td><td><i>50</i></td></tr><tr><td><i>Monday to Friday – thereafter</i></td><td><i>100</i></td></tr><tr><td><i>Saturday – first 2 hours</i></td><td><i>50</i></td></tr><tr><td><i>Saturday – thereafter</i></td><td><i>100</i></td></tr><tr><td><i>Sunday</i></td><td><i>100</i></td></tr><tr><td><i>Public holiday</i></td><td><i>150</i></td></tr></tbody></table>	For overtime worked on %	Loading payable in addition to ordinary time rate	<i>Monday to Friday – first 2 hours</i>	<i>50</i>	<i>Monday to Friday – thereafter</i>	<i>100</i>	<i>Saturday – first 2 hours</i>	<i>50</i>	<i>Saturday – thereafter</i>	<i>100</i>	<i>Sunday</i>	<i>100</i>	<i>Public holiday</i>	<i>150</i>
For overtime worked on %	Loading payable in addition to ordinary time rate														
<i>Monday to Friday – first 2 hours</i>	<i>50</i>														
<i>Monday to Friday – thereafter</i>	<i>100</i>														
<i>Saturday – first 2 hours</i>	<i>50</i>														
<i>Saturday – thereafter</i>	<i>100</i>														
<i>Sunday</i>	<i>100</i>														
<i>Public holiday</i>	<i>150</i>														

Clause 10.5(b) states that the casual loading is applied ‘*in addition to the ordinary hourly rate and penalty rates payable for shift, weekend and public holiday work*’. However, there is no mention of whether the casual loading is applied to the overtime rates in clause 23.3 and, if it is, whether this should be calculated on a cumulative or compounding basis.

**Example 2: Manufacturing and Associated Industries and Occupations Award 2010
[MA000010]**

14.1 *A casual employee is one engaged and paid as such. A casual employee for working ordinary time must be paid an hourly rate calculated on the basis of one thirty-eighth of the minimum weekly wage prescribed in clause 24.1(a) for the work being performed plus a casual loading of 25%. The loading constitutes part of the casual employee's all-purpose rate.*

The above clause is inconsistent in that it states the casual loading is only paid for ordinary time, however it also states that the casual loading forms part of the all-purpose rate, which infers that it is payable on overtime hours. However, there is capacity for employers and employees to incorrectly apply the casual loading, for example if they:

- do not know the meaning of the term '*all-purpose rate*'; or
- understand the general meaning of the term '*all-purpose rate*', but apply it incorrectly because of the reference to the casual loading only applying to an employee working ordinary time. For example, an employer or employee could interpret the clause as meaning that the casual loading forms part of the '*all-purpose rate*' for ordinary time only, e.g. for allowances and penalties, but not for overtime.

Example 3: Higher Education – General Staff Award 2010 [MA000007]

12.1 *Casual employment means a person engaged by the hour and paid on an hourly basis that includes a loading related to award based benefits for which a casual employee is not eligible. The casual loading will be 25%.*

[...]

23 Overtime

23.1 *An employee will be paid overtime for all authorised work performed outside of, or in excess of, the ordinary or rostered hours as follows:*

Time worked	
<i>Monday – Saturday</i>	<i>150% of the ordinary rate of pay for the first two hours (first three hours for PACCT staff); and 200% of the ordinary rate of pay thereafter.</i>
<i>Sunday</i>	<i>200% of the ordinary rate of pay.</i>
<i>Public holidays</i>	<i>250% of the ordinary rate of pay.</i>

The above clause does not clearly state whether the overtime rate is calculated on the employee's base rate of pay, or the rate of pay inclusive of the casual loading. This is because it is not clearly stated whether the ordinary rate of pay for casual employees includes the casual loading. This issue could be clarified by the Commission by expressly stating whether the ordinary rate of pay includes the casual loading in this instance.

APPENDIX D– The location/labelling of particular entitlements

Illustrative examples from the following modern awards are set out below:

1. *Social, Community, Home Care and Disability Services Industry Award 2010* [MA000100]
2. *Asphalt Industry Award 2010* [MA000054]
3. *Supported Employment Services Award 2010* [MA000103]
4. *Stevedoring Industry Award 2010* [MA000053]

Example 1: *Social, Community, Home Care and Disability Services Industry Award 2010* [MA000100]

28. Overtime and penalty rates

28.1 Overtime rates

(a) Full-time employees

A full-time employee will be paid the following payments for all work done in addition to their rostered ordinary hours on any day:

(i) disability services, home care and day care employees—for all authorised overtime on Monday to Saturday, payment will be made at the rate of time and a half for the first two hours and double time thereafter;

(ii) social and community services and crisis accommodation employees—for all authorised overtime on Monday to Saturday, payment will be made at the rate of time and a half for the first three hours and double time thereafter;

(iii) for all authorised overtime on a Sunday, payment will be made at the rate of double time;

(iv) for all authorised overtime on a public holiday, payment will be made at the rate of double time and a half; and

(v) overtime rates under this clause will be in substitution for, and not cumulative upon, the shift premiums prescribed in clause 29—Shiftwork and Saturday and Sunday work premiums prescribed in clause 26—Saturday and Sunday work.

(b) Part-time employees and casual employees

(i) All time worked by part-time or casual employees in excess of 38 hours per week or 76 hours per fortnight will be paid for at the rate of time and a half for the first two hours and double time thereafter, except that on Sundays such overtime will be paid for at the rate of double time and on public holidays at the rate of double time and a half.

(ii) All time worked by part-time or casual employees which exceeds 10 hours per day, will be paid at the rate of time and a half for the first two hours and double time thereafter, except on Sundays when overtime will be paid for at the

rate of double time, and on public holidays at the rate of double time and a half.

(iii) Time worked up to the hours prescribed in clause 28.1(b)(ii) will, subject to clause 28.1(b)(i), not be regarded as overtime and will be paid for at the ordinary rate of pay (including the casual loading in the case of casual employees).

(iv) Overtime rates payable under this clause will be in substitution for and not cumulative upon:

(A) the shift premiums prescribed in clause 29—Shiftwork; and

(B) the casual loading prescribed in clause 10.4(b),

and are not applicable to ordinary hours worked on a Saturday or a Sunday.

28.2 Time off instead of payment for overtime

By mutual agreement, a full-time or a part-time employee may be compensated by way of time off instead of payment of overtime (time for time) on the following basis:

(a) Time off instead of payment for overtime must be taken at ordinary rates within three months of it being accrued.

(b) Where it is not possible for an employee to take the time off, instead of payment for overtime, within the three month period, it is to be paid out at the appropriate overtime rate based on the rates of pay applying at the time payment is made.

(c) An employee cannot be compelled to take time off instead of overtime.”

28.3 Rest period after overtime

(a) An employee, other than a casual, who works so much overtime between the termination of their ordinary work on any day or shift and the commencement of their ordinary work on the next day or shift that they have not had at least 10 consecutive hours off duty between those times, will be released after completion of such overtime until they have had 10 consecutive hours off duty without loss of pay for rostered ordinary hours occurring during such absence.

(b) If, on the instructions of the employer, such an employee resumes or continues work without having had 10 consecutive hours off duty, they will be paid at the rate of double time until they are released from duty for such rest period and they will then be entitled to be absent until they have had 10 consecutive hours off duty without loss of pay for rostered ordinary hours occurring during such absence.

28.4 Recall to work overtime

An employee recalled to work overtime after leaving the employer’s or client’s premises will be paid for a minimum of two hours’ work at the appropriate rate for each time so recalled. If the work required is completed in less than two hours the employee will be released from duty.

28.5 Rest break during overtime

(a) An employee recalled to work overtime after leaving the employer's or client's premises and who is required to work for more than four hours will be allowed 20 minutes for the partaking of a meal and a further 20 minutes after each subsequent four hours' overtime; all such time will be counted as time worked.

(b) The meals referred to in clause 28.5(a) will be allowed to the employee free of charge. Where the employer is unable to provide such meals, a meal allowance, as prescribed in clause 20.3, will be paid to the employee concerned.

The title of clause 28 has the potential to cause confusion. It is titled '*Overtime and penalty rates*' however the content of the clause only deals with overtime. In addition to this, the weekend and public holiday penalty rates applicable for shift-workers are contained within the '*Shiftwork*' clause at clause 29, and there is a separate public holiday penalty rate clause at clause 34. There is therefore the potential for readers to overlook particular entitlements.

Example 2: Asphalt Industry Award 2010 [MA000054]

24 Shiftwork

22.2 Afternoon and night shift allowances

- (a) *Employees whilst working on afternoon or night shift will be paid 15% more than their ordinary rate.*
- (b) *An employee who is required to work on any afternoon or night shift that does not continue for at least five successive afternoons or nights will be paid at the rate of time and a half and all time worked in excess of eight hours must be paid for at the rate of double time.*
- (c) *An employee who (except at the employee's own request):*
 - (i) *during a period of engagement on shift, works night shift only;*
 - (ii) *remains on a night shift longer than four successive weeks; or*
 - (iii) *works on a night shift which does not rotate or alternate with another shift or with day work so as to give that employee at least one third of working time off the night shift cycle each cycle will, during such engagement, period or cycle be paid 30% more than the employee's ordinary rate for all time worked during ordinary working hours on such night shift.*
- (d) *The loadings provided for in clause 22.2 are not cumulative.*

[...]

22.5 Overtime

- (a) *Subject to clause 22(f) work done by shift-workers in excess of and outside the ordinary working hours inclusive of time worked for accrual purposes as per clause 22.3 of their shift or on a shift other than a rostered shift will be paid at the rate of double time.*
- (b) *This provision will not apply to arrangements between the employees themselves or in cases due to rotation of shift or when the relief does not come on duty at the proper time. For all time worked after finishing an ordinary shift, unrelieved employees will be paid at the rate of time and a half for the first eight hours and double time thereafter.*

24.6 Saturday shifts

Employees working Saturday shifts will be paid for ordinary hours of work inclusive of time worked for accrual purposes as prescribed in clause 11.2 between midnight on Friday and midnight on Saturday at the minimum rate of time and a half.

24.7 Sundays and public holidays

- (a) *Subject to this clause, Sundays and public holidays will apply to shiftworkers as follows:*
 - (i) *Where shifts commence between 11.00pm and midnight on a Sunday or public holiday, the time so worked before midnight will not entitle the employee to the Sunday or public holiday rate.*
 - (ii) *The time worked by an employee on a shift commencing before midnight on the day preceding a Sunday or public holiday and extending into a Sunday or public holiday will be regarded as time worked on such Sunday or public holiday.*
 - (iii) *Where shifts fall partly on a Sunday or a public holiday that shift, the major portion of which falls on a Sunday or a public holiday, will be regarded as the Sunday or public holiday shift.*

[...]

24 Overtime and penalty rates

24.1 Payment for working overtime

- (a) *Except as provided below, all time worked in excess of and outside the ordinary hours of work inclusive of time worked for accrual purposes as prescribed in clause 21 – Ordinary hours of work and clause 21 – Ordinary hours of work.*

24.2 Ordinary hours of work

- (a) *The ordinary hours of work will be an average of 38 hours per week over a four week cycle. Employees will work eight hours each day and 0.4 of one hour of each day worked will accrue as an entitlement to take a rostered day off in each cycle as a day off paid for as though worked.*
- (b) *The ordinary hours of part-time and casual employees will be in accordance with clause 10 – types of employment.*
- (c) *Employees – other than shift-workers*
- (d) *Employees other than shift-workers may be required to work up to 10 ordinary hours per day, between the hours of 6.00am and 6.00pm Monday to Friday.*

24.3 [...]

- (a) *Shift-work will be paid for at:*
- (i) *one and a half times the ordinary prescribed rate for the first two hours; and*
- (ii) *double the ordinary prescribed rate for all time thereafter.*
- (b) *In computing overtime, each day's work will stand alone.*

[...]

24.4 Saturday work

An employee other than a shift-worker required to work overtime on a Saturday will be paid for a minimum of four hours' work at overtime rates.

24.5 Sunday work

Employees required to work overtime on Sundays will be paid for a minimum of four hours' work at double time. The double time is to be paid until the employee is relieved from duty.

[...]

28 Public holidays

[...]

28.1 Payment for work on a public holiday

If an employee works on any of the public holidays arising from this clause or any day substituted for such public holidays the employee will be paid at the rate of double time and one half of their ordinary rate of pay, with a minimum payment of four hours at such rate.

The title of clause 24 has the potential to cause confusion. It is titled 'Overtime and penalty rates' however the content of the clause only deals with overtime. In addition to this, the weekend and public holiday penalty rates applicable for shift-workers are contained within the 'Shiftwork' clause at clause 22, and there is a separate public holiday penalty rate clause at clause 28. There is therefore the potential for users to overlook particular entitlements.

Example 3: Supported Employment Services Award 2010 [MA000103]

20. Ordinary hours of work and rostering

- 20.1 *The ordinary hours of work will be worked in not more than five consecutive shifts of not more than eight hours or, by agreement with the employee, 10 consecutive hours, and will not exceed 38 hours per week or an average of 38 hours per week over an agreed roster cycle.*
- 20.2 *Subject to clause 21 – Overtime and penalty rates, ordinary time will be worked between the hours of 6.00am and 6.00pm Monday to Sunday.*
- 20.3 *Where work is carried out on weekends, payment will be at time and half on Saturdays and double time on Sundays, other than for employees engaged on catering services who will be paid at the rate of time and three quarters on Sunday.*
- 20.4 *An employee who works their ordinary hours in a shift which finishes after 6.00pm and at or before 12.00 midnight Monday to Friday, will be paid 15% more than their ordinary rate for the whole shift.*
- 20.5 *By agreement between an employer and an employee, an employee who works their hours in a rotating roster shift which finishes after 12.00 midnight and at or before 8.00am Monday to Friday, will be paid for the whole shift 30% more than their ordinary rate.*

[...]

21. Overtime and penalty rates

- 21.1 *In computing overtime, each day's work will stand alone.*
- 21.2 *Subject to clause 21.7 all-time worked outside the ordinary hours of work will be overtime and will be paid for at the rate of time and a half for the first two hours and double time thereafter. Overtime at the rate of double time will be paid for all time worked after 12.00 noon on a Saturday where such time is not part of an employee's ordinary shift and all day Sunday.*
- 21.3 *When overtime work is necessary it will, wherever reasonably practicable, be so arranged that employees have at least 10 consecutive hours off duty between the work of successive days.*
- 21.4 *An employee working overtime will be provided with a half hour for meal break and a suitable meal or be paid a meal allowance in any of the following circumstances:*
- (a) *when required to work beyond 6.00pm; or*
 - (b) *if overtime continues beyond 10.00pm.*
- 21.5 *Where an employee's ordinary hours of work are less than 38 per week, by agreement between that employee and the employer, an employee may work and be paid at ordinary time up to two hours beyond their normal finishing time. In any case, an employee will not be required to work more than 10 hours in any one day nor more than 38 hours in any one week without the payment of overtime. For the purposes of this clause week means Monday to Friday inclusive.*
- 21.6 *In computing overtime, calculation will be made to the nearest five minutes.*

The heading to clause 21, 'Overtime and penalty rates' implies that information relating to the penalty rates payable will be contained in clause 21 of the modern award. Penalty rates however are located in clause 20 of the modern award under the heading 'Ordinary hours of work and rostering'. This has the potential to confuse readers of the modern award.

Example 4: Stevedoring Industry Award 2010 [MA000053]

19. Overtime and penalty rates

19.1 Overtime rates

Where an employer requires an employee to work overtime the following rates of pay apply:

- (a) for day work employees, work performed in excess of or outside the ordinary hours the rate of pay will be on Monday to Saturday twice the ordinary rate and on Sunday or a public holiday, two and a half times the ordinary rate;*
- (b) for shift-work employees, all time worked prior to the commencement of or following the conclusion of a shift during which the employee's ordinary hours of work are performed and such time is continuous with the shift, the rate of pay for the overtime is the ordinary rate in addition to the rate appropriate to the shift in which the overtime is worked; and*
- (c) for shift-worker employees, overtime which is not continuous with a shift during which the employee's ordinary hours of work are performed, the rate of pay will be twice the ordinary rate on Monday to Saturday, and two and a half times the ordinary rate on Sunday and for day and evening shifts on a public holiday, and three times the ordinary rate on a night shift on a public holiday.*

19.2 Minimum payment for overtime

- (a) An employer who requires an employee to work overtime continuous with the employee's ordinary hours of work must pay the employee the following minimum payments:
 - (i) for day work employees – one, two or three hours.**

[...]

19.3 Maximum duration of overtime

An employee will not, unless working a double header, be required to work for a period in excess of:

- (a) 10 hours, where the overtime attaches to a day shift; or*
- (b) eight or nine hours, where the overtime attaches to an evening or night shift respectively.*

[...]

Clause 19 is titled 'overtime and penalty rates', however this clause only deals with overtime rates and not penalty rates. Penalty rates relating to public holidays are contained in clause 25. This has the potential for users to overlook this entitlement.

APPENDIX E – Stating whether annual leave loading or the applicable penalty rate applies

Illustrative examples from the following awards are set out below:

1. *Clerks Private Sector Award 2010* [MA000002]
2. *Storage Services and Wholesale Award* [MA000084]
3. *Miscellaneous Award 2010* [MA000104]

Example 1: Clerks Private Sector Award 2010 [MA000002]¹⁹

29.3 Annual leave loading

- (a) *During a period of annual leave an employee will receive a loading calculated on the rate of wage prescribed in clause 16 – Minimum weekly wages. Annual leave loading payment is payable on leave accrued.*
- (b) *The loading is as follows:*
 - (i) *Day work*
Employees who would have worked on day work only had they not been on leave – 17.5% or the relevant weekend penalty rates, whichever is the greater but not both.
 - (ii) *Shift-work*
Employees who would have worked on shift-work had they not been on leave – a loading of 17.5% or the shift loading (including relevant weekend penalty rates) whichever is the greater but not both.

The following examples illustrate the uncertainty around the operation of the above clauses. An employee usually works Thursday to Saturday and receives their base rate of pay on Thursday and Friday and a 25% penalty for all hours on Saturday. The employee takes three days annual leave from Thursday to Saturday. It is unclear in this situation whether clause 29.3 requires a comparison:

1. between the annual leave loading and any applicable penalties for each day of the annual leave. In this scenario the employee would receive the annual leave loading of 17.5% for all hours on a Thursday and Friday and the higher penalty rate of 25% for all Saturday hours.

OR

¹⁹ The following modern awards contain the same or similar wording: Manufacturing and Associated Industries and Occupations Award, Poultry Processing Award (shift workers only), Pharmaceutical Industry Award (shift workers only), Animal Care and Veterinary Services Award, Graphic Arts Award (shift workers only), Health Professionals and Support Services Award (shift workers only), Medical Practitioners Award (shift workers only), Nurses Award (shift workers only), Pharmacy Industry Award, Road Transport and Distribution Award, Seafood Processing Award, Waste Management Award, Banking, Finance and Insurance Award, Business Equipment Award, Legal Services Award (shift workers only), Pastoral Award (shift workers only) – see further notes on Pastoral Award below, Sugar Industry Award, Wine Industry Award, Aboriginal Community Controlled Health Services Award (shift workers only), Aged Care Award (shift workers only), Airport Employees Award (shift workers only), Dry Cleaning and Laundry Industry Award (shift workers only), Fast Food Industry Award, Food, Beverage and Tobacco Manufacturing Award, General Retail Industry Award, Hair and Beauty Industry Award.

- 2 for the whole period of leave. The employer would compare the sum derived when applying:
- a. the base rate of pay for all hours worked on Thursday, Friday and Saturday, multiplied by the annual leave loading of 17.5%; and
 - b. the base rate of pay with no annual leave loading for any of the three days, plus the Saturday penalty of 25% applied to those hours worked on a Saturday.

Example 2: Storage Services and Wholesale Award 2010 [MA000084]

26.4 Applicable loading

- (a) *The rate of pay for annual leave is the employee's rate of pay at the time the employee takes the annual leave, plus 17.5% of that rate or the relevant weekend penalty rates, whichever is greater but not both.*
- (b) *In the case of a shift-worker, where the employee would have received shift loadings had the employee not been on leave during the relative period, and such loadings would have entitled such employee to a greater amount than the 17.5% loading, then the shift loadings will be added to the employee's ordinary pay instead of the annual leave loading.*

Similarly, in determining whether to pay annual leave loading or the penalty rate from the above clauses, it is not clear whether the reference to the employee's rate of pay 'at *the time the employee takes annual leave*' in subclause 26.4(a) means that each day of annual leave should be considered separately, or whether the entire period of leave taken as annual leave should be considered as a whole.

Example 3: Miscellaneous Award 2010 [MA000104]

23. Annual leave

...

- 23.3 *When taking a period of paid annual leave an employee must be paid a loading of 17.5% in addition to the payment required by the NES or the ordinary pay they would have received for the period of the leave, whichever is the greater.*

Again, in determining whether to pay annual leave loading or the penalty rate, it is not clear whether the reference to the employee's '*ordinary pay they would have received*' for the period of leave in subclause 23.3 would include penalties associated with weekend work. Further, if so, it is not clear when determining which entitlement is greater whether each day of annual leave should be considered separately on a day by day basis, or whether the entire period of leave taken as annual leave should be considered as a whole.

APPENDIX F: FWO's ANALYSIS OF PAY RATES, PENALTY AND OVERTIME PROVISIONS IN MODERN AWARDS

Modern awards are grouped into the Award Stages of the Review.

In analysing each modern award, an overtime clause was considered clear if it expressly outlines the hours when overtime is payable (either by reference to the ordinary hours clause or by outlining a span of hours) and how the overtime is to be calculated.

An overtime clause was considered not to be clear if it:

- refers to '*ordinary hours*' with no explanation of that term or no direct referral to the ordinary hours of work clause;
- refers to a complex ordinary hours clause;
- states that overtime is payable on hours worked '*outside*' ordinary hours (and does not refer to hours worked in excess of ordinary hours, if overtime applies for these hours under the modern award);
- states that overtime is payable on hours worked '*in excess*' of ordinary hours (and does not refer to hours worked outside of ordinary hours, if overtime applies for these hours under the award); or
- is unclear how overtime and weekend penalty rates interact.

A penalty rate clause was considered clear if it expressly outlines the hours when a penalty rate is payable and how such penalty rate is to be paid. A penalty clause was not considered to be clear if:

- it is unclear whether it relates to overtime or a penalty;
- it requires an understanding of the term '*ordinary hours*' and/or reference to the ordinary hours clause;
- it is unclear how penalties interacted with overtime;
- it is unclear when penalties cease to apply; or
- there are multiple penalties spread over different clauses of the modern award.²⁰

²⁰ This analysis did not consider shift work penalties.

Ordinary rates

Stage	Code	Award	Hrly rates ONLY	Wkly rates ONLY	Annual rates ONLY	Hrly & wkly ONLY (same employees)	Wkly & annual ONLY (same employees)	Hrly, Wkly & Annual ONLY (same employees)	Multiple methods of payment that apply to the same employees (different calculation method)	Multiple methods of payment, that only apply to some employees	Multiple methods of payment, but all apply to different employees	Where hrly & wkly ONLY (same employees) does Hrly rate x Ordinary wkly hrs = wkly rate?
1	MA000060	Aluminium Industry Award 2010		Yes								N/A
1	MA000098	Ambulance & Patient Transport Industry Award 2010		Yes								N/A
1	MA000054	Asphalt Industry Award 2010		Yes								N/A
1	MA000001	Black Coal Mining Industry Award 2010		Yes								N/A
1	MA000055	Cement & Lime Award 2010		Yes								N/A
1	MA000022	Cleaning Services Award 2010				Yes						No
1	MA000056	Concrete Products Award 2010		Yes								N/A
1	MA000024	Cotton Ginning Award 2010				Yes						No
1	MA000061	Gas Industry Award 2010		Yes								N/A
1	MA000062	Hydrocarbons Industry (Upstream) Award 2010		Yes								N/A

Ordinary rates

Stage	Code	Award	Hrly rates ONLY	Wkly rates ONLY	Annual rates ONLY	Hrly & wkly ONLY (same employees)	Wkly & annual ONLY (same employees)	Hrly, Wkly & Annual ONLY (same employees)	Multiple methods of payment that apply to the same employees (different calculation method)	Multiple methods of payment, that only apply to some employees	Multiple methods of payment, but all apply to different employees	Where hrly & wkly ONLY (same employees) does Hrly rate x Ordinary wkly hrs = wkly rate?
1	MA000010	Manufacturing & Associated Industries & Occupations Award 2010				Yes						No
1	MA000093	Marine Tourism & Charter Vessels Award 2010									Yes	N/A
1	MA000086	Maritime Offshore Oil & Gas Award 2010			Yes							N/A
1	MA000059	Meat Industry Award 2010		Yes								N/A
1	MA000011	Mining Industry Award 2010		Yes								N/A
1	MA000072	Oil Refining & Manufacturing Award 2010		Yes								N/A
1	MA000069	Pharmaceutical Industry Award 2010				Yes						No
1	MA000074	Poultry Processing Award 2010				Yes						No
1	MA000057	Premixed Concrete Award 2010		Yes								N/A
1	MA000108	Professional Diving Industry (Industrial) Award 2010		Yes								N/A

Ordinary rates

Stage	Code	Award	Hrly rates ONLY	Wkly rates ONLY	Annual rates ONLY	Hrly & wkly ONLY (same employees)	Wkly & annual ONLY (same employees)	Hrly, Wkly & Annual ONLY (same employees)	Multiple methods of payment that apply to the same employees (different calculation method)	Multiple methods of payment, that only apply to some employees	Multiple methods of payment, but all apply to different employees	Where hrly & wkly ONLY (same employees) does Hrly rate x Ordinary wkly hrs = wkly rate?
1	MA000109	Professional Diving Industry (Recreational) Award 2010					Yes					N/A
1	MA000037	Quarrying Award 2010		Yes								N/A
1	MA000015	Rail Industry Award 2010					Yes					N/A
1	MA000107	Salt Industry Award 2010		Yes								N/A
1	MA000016	Security Services Industry Award 2010		Yes								N/A
1	MA000053	Stevedoring Industry Award 2010		Yes								N/A
1	MA000017	Textile, Clothing, Footwear & Associated Industries Award 2010		Yes								N/A
1	MA000071	Timber Industry Award 2010				Yes						No
1	MA000089	Vehicle Manufacturing, Repair, Services & Retail Award 2010				Yes						No
1	MA000044	Wool Storage, Sampling & Testing Award 2010				Yes						No
2	MA000092	Alpine Resorts Award 2010	Yes									N/A

Ordinary rates

Stage	Code	Award	Hrly rates ONLY	Wkly rates ONLY	Annual rates ONLY	Hrly & wkly ONLY (same employees)	Wkly & annual ONLY (same employees)	Hrly, Wkly & Annual ONLY (same employees)	Multiple methods of payment that apply to the same employees (different calculation method)	Multiple methods of payment, that only apply to some employees	Multiple methods of payment, but all apply to different employees	Where hrly & wkly ONLY (same employees) does Hrly rate x Ordinary wkly hrs = wkly rate?
2	MA000118	Animal Care & Veterinary Services Award 2010								Yes		N/A
2	MA000114	Aquaculture Industry Award 2010		Yes								N/A
2	MA000110	Corrections & Detention (Private Sector) Award 2010								Yes		N/A
2	MA000111	Fire Fighting Industry Award 2010		Yes								N/A
2	MA000026	Graphic Arts Award 2010				Yes						No
2	MA000027	Health Professionals & Support Services Award 2010		Yes								N/A
2	MA000008	Horse & Greyhound Training Award 2010		Yes								N/A
2	MA000031	Medical Practitioners Award 2010			Yes							N/A
2	MA000034	Nurses Award 2010		Yes								N/A
2	MA000063	Passenger Vehicle Transportation Award 2010		Yes								N/A
2	MA000012	Pharmacy Industry Award 2010		Yes								N/A

Ordinary rates

Stage	Code	Award	Hrly rates ONLY	Wkly rates ONLY	Annual rates ONLY	Hrly & wkly ONLY (same employees)	Wkly & annual ONLY (same employees)	Hrly, Wkly & Annual ONLY (same employees)	Multiple methods of payment that apply to the same employees (different calculation method)	Multiple methods of payment, that only apply to some employees	Multiple methods of payment, but all apply to different employees	Where hrly & wkly ONLY (same employees) does Hrly rate x Ordinary wkly hrs = wkly rate?
2	MA000014	Racing Industry Ground Maintenance Award 2010		Yes								N/A
2	MA000039	Road Transport (Long Distance Operations) Award 2010							Yes			N/A
2	MA000038	Road Transport & Distribution Award 2010				Yes						No
2	MA000068	Seafood Processing Award 2010				Yes						No
2	MA000084	Storage Services & Wholesale Award 2010		Yes								N/A
2	MA000042	Transport (Cash in Transit) Award 2010		Yes								N/A
2	MA000043	Waste Management Award 2010		Yes								N/A
3	MA000019	Banking, Finance & Insurance Award					Yes					N/A
3	MA000021	Business Equipment Award 2010					Yes					N/A
3	MA000002	Clerks – Private Sector Award 2010		Yes								N/A
3	MA000045	Coal Export Terminals Award 2010		Yes								N/A

Ordinary rates

Stage	Code	Award	Hrly rates ONLY	Wkly rates ONLY	Annual rates ONLY	Hrly & wkly ONLY (same employees)	Wkly & annual ONLY (same employees)	Hrly, Wkly & Annual ONLY (same employees)	Multiple methods of payment that apply to the same employees (different calculation method)	Multiple methods of payment, that only apply to some employees	Multiple methods of payment, but all apply to different employees	Where hrly & wkly ONLY (same employees) does Hrly rate x Ordinary wkly hrs = wkly rate?
3	MA000083	Commercial Sales Award 2010				Yes						No
3	MA000023	Contract Call Centres Award 2010		Yes								N/A
3	MA000085	Dredging Industry Award 2010		Yes								N/A
3	MA000075	Educational Services (Post-Secondary Education) Award 2010									Yes	N/A
3	MA000076	Educational Services (Schools) General Staff Award 2010					Yes					N/A
3	MA000088	Electrical Power Industry Award 2010		Yes								N/A
3	MA000094	Fitness Industry Award 2010				Yes						No
3	MA000101	Gardening & Landscaping Services Award 2010				Yes						No
3	MA000006	Higher Education – Academic Staff – Award 2010									Yes	N/A
3	MA000007	Higher Education – General Staff – Award 2010			Yes							N/A

Ordinary rates

Stage	Code	Award	Hrly rates ONLY	Wkly rates ONLY	Annual rates ONLY	Hrly & wkly ONLY (same employees)	Wkly & annual ONLY (same employees)	Hrly, Wkly & Annual ONLY (same employees)	Multiple methods of payment that apply to the same employees (different calculation method)	Multiple methods of payment, that only apply to some employees	Multiple methods of payment, but all apply to different employees	Where hrly & wkly ONLY (same employees) does Hrly rate x Ordinary wkly hrs = wkly rate?
3	MA000028	Horticulture Award 2010				Yes						No
3	MA000099	Labour Market Assistance Industry Award 2010		Yes								N/A
3	MA000116	Legal Services Award 2010		Yes								N/A
3	MA000112	Local Government Industry Award 2010		Yes								N/A
3	MA000050	Marine Towage Award 2010							Yes			N/A
3	MA000030	Market & Social Research Award 2010						Yes				N/A
3	MA000104	Miscellaneous Award 2010				Yes						No
3	MA000033	Nursery Award 2010				Yes						No
3	MA000035	Pastoral Award 2010									Yes	N/A
3	MA000051	Port Authorities Award 2010		Yes								N/A
3	MA000052	Ports, Harbours & Enclosed Water Vessels Award 2010		Yes								N/A
3	MA000106	Real Estate Industry Award 2010		Yes								N/A

Ordinary rates

Stage	Code	Award	Hrly rates ONLY	Wkly rates ONLY	Annual rates ONLY	Hrly & wkly ONLY (same employees)	Wkly & annual ONLY (same employees)	Hrly, Wkly & Annual ONLY (same employees)	Multiple methods of payment that apply to the same employees (different calculation method)	Multiple methods of payment, that only apply to some employees	Multiple methods of payment, but all apply to different employees	Where hrly & wkly ONLY (same employees) does Hrly rate x Ordinary wkly hrs = wkly rate?
3	MA000122	Seagoing Industry Award 2010									Yes	N/A
3	MA000040	Silviculture Award 2010				Yes						No
3	MA000082	Sporting Organisations Award 2010					Yes					N/A
3	MA000121	State Government Agencies Administration Award 2010			Yes							N/A
3	MA000087	Sugar Industry Award 2010				Yes						No
3	MA000041	Telecommunications Services Award 2010		Yes								N/A
3	MA000090	Wine Industry Award 2010				Yes						No
4	MA000115	Aboriginal Community Controlled Health Services Award 2010		Yes								N/A
4	MA000018	Aged Care Award 2010		Yes								N/A
4	MA000046	Air Pilots Award 2010									Yes	N/A
4	MA000047	Aircraft Cabin Crew Award 2010		Yes								N/A
4	MA000048	Airline Operations – Ground Staff Award 2010		Yes								N/A

Ordinary rates

Stage	Code	Award	Hrly rates ONLY	Wkly rates ONLY	Annual rates ONLY	Hrly & wkly ONLY (same employees)	Wkly & annual ONLY (same employees)	Hrly, Wkly & Annual ONLY (same employees)	Multiple methods of payment that apply to the same employees (different calculation method)	Multiple methods of payment, that only apply to some employees	Multiple methods of payment, but all apply to different employees	Where hrly & wkly ONLY (same employees) does Hrly rate x Ordinary wkly hrs = wkly rate?
4	MA000049	Airport Employees Award 2010			Yes							N/A
4	MA000080	Amusement, Events & Recreation Award 2010				Yes						No
4	MA000079	Architects Award 2010			Yes							N/A
4	MA000078	Book Industry Award 2010		Yes								N/A
4	MA000091	Broadcasting & Recorded Entertainment Award 2010									Yes	N/A
4	MA000020	Building & Construction General On-site Award 2010				Yes						No
4	MA000095	Car Parking Award 2010		Yes								N/A
4	MA000070	Cemetery Industry Award 2010				Yes						No
4	MA000120	Children's Services Award 2010				Yes						No
4	MA000096	Dry Cleaning & Laundry Industry Award 2010		Yes								N/A
4	MA000077	Educational Services (Teachers) Award 2010			Yes							N/A

Ordinary rates

Stage	Code	Award	Hrly rates ONLY	Wkly rates ONLY	Annual rates ONLY	Hrly & wkly ONLY (same employees)	Wkly & annual ONLY (same employees)	Hrly, Wkly & Annual ONLY (same employees)	Multiple methods of payment that apply to the same employees (different calculation method)	Multiple methods of payment, that only apply to some employees	Multiple methods of payment, but all apply to different employees	Where hrly & wkly ONLY (same employees) does Hrly rate x Ordinary wkly hrs = wkly rate?
4	MA000025	Electrical, Electronic & Communications Contracting Award 2010				Yes						No
4	MA000003	Fast Food Industry Award 2010		Yes								N/A
4	MA000073	Food, Beverage & Tobacco Manufacturing Award 2010				Yes						No
4	MA000105	Funeral Industry Award 2010				Yes						No
4	MA000004	General Retail Industry Award 2010		Yes								N/A
4	MA000005	Hair & Beauty Industry Award 2010		Yes								N/A
4	MA000009	Hospitality Industry (General) Award 2010				Yes						No
4	MA000064	Hydrocarbons Field Geologists Award 2010			Yes							N/A
4	MA000029	Joinery & Building Trades Award 2010				Yes						No
4	MA000067	Journalists Published Media Award 2010		Yes								N/A
4	MA000081	Live Performance Award 2010								Yes		N/A

Ordinary rates

Stage	Code	Award	Hrly rates ONLY	Wkly rates ONLY	Annual rates ONLY	Hrly & wkly ONLY (same employees)	Wkly & annual ONLY (same employees)	Hrly, Wkly & Annual ONLY (same employees)	Multiple methods of payment that apply to the same employees (different calculation method)	Multiple methods of payment, that only apply to some employees	Multiple methods of payment, but all apply to different employees	Where hrly & wkly ONLY (same employees) does Hrly rate x Ordinary wkly hrs = wkly rate?
4	MA000117	Mannequins & Models Award 2010									Yes	N/A
4	MA000032	Mobile Crane Hiring Award 2010				Yes						No
4	MA000097	Pest Control Industry Award 2010		Yes								N/A
4	MA000036	Plumbing & Fire Sprinklers Award 2010				Yes						No
4	MA000065	Professional Employees Award 2010			Yes							N/A
4	MA000013	Racing Clubs Events Award 2010				Yes						No
4	MA000058	Registered & Licensed Clubs Award 2010								Yes		N/A
4	MA000119	Restaurant Industry Award 2010				Yes						No
4	MA000100	Social, Community, Home Care & Disability Services Industry Award 2010		Yes								N/A
4	MA000103	Supported Employment Services Award 2010				Yes						No
4	MA000066	Surveying Award 2010				Yes						No

Ordinary rates

Stage	Code	Award	Hrly rates ONLY	Wkly rates ONLY	Annual rates ONLY	Hrly & wkly ONLY (same employees)	Wkly & annual ONLY (same employees)	Hrly, Wkly & Annual ONLY (same employees)	Multiple methods of payment that apply to the same employees (different calculation method)	Multiple methods of payment, that only apply to some employees	Multiple methods of payment, but all apply to different employees	Where hrly & wkly ONLY (same employees) does Hrly rate x Ordinary wkly hrs = wkly rate?
4	MA000102	Travelling Shows Award 2010				Yes						No
4	MA000113	Water Industry Award 2010				Yes						No

Overtime							
Stage	Code	Award	Overtime referred to in clause title?	Hrs when overtime applies clearly stated?	Overtime calculation (daily or wkly basis) expressed as...	Casual entitlement to overtime clearly stated?	Casual loading interaction with overtime clearly stated?
1	MA000060	Aluminium Industry Award 2010	Yes	No	Each day stands alone	No	No
1	MA000098	Ambulance & Patient Transport Industry Award 2010	Yes	No	Award is silent	No	No
1	MA000054	Asphalt Industry Award 2010	Yes	No	Each day stands alone	No	No
1	MA000001	Black Coal Mining Industry Award 2010	Yes	No	Each day treated separately	No	No
1	MA000055	Cement & Lime Award 2010	Yes	No	Each day stands alone	No	No
1	MA000022	Cleaning Services Award 2010	Yes	No	Each day stands alone	Yes	Yes
1	MA000056	Concrete Products Award 2010	Yes	No	Award is silent	No	No
1	MA000024	Cotton Ginning Award 2010	Yes	Yes	Award is silent	No	No
1	MA000061	Gas Industry Award 2010	Yes	No	Award is silent	No	No
1	MA000062	Hydrocarbons Industry (Upstream) Award 2010	Yes	No	Each day or shift stands alone	No	No
1	MA000010	Manufacturing & Associated Industries & Occupations Award 2010	Yes	No	Each day stands alone	No	No
1	MA000093	Marine Tourism & Charter Vessels Award 2010	Yes	Yes	Award is silent	Yes	N/A

Overtime							
Stage	Code	Award	Overtime referred to in clause title?	Hrs when overtime applies clearly stated?	Overtime calculation (daily or wkly basis) expressed as...	Casual entitlement to overtime clearly stated?	Casual loading interaction with overtime clearly stated?
1	MA000086	Maritime Offshore Oil & Gas Award 2010	N/A	N/A	No overtime provisions in Award	N/A	N/A
1	MA000059	Meat Industry Award 2010	Yes	No	Award is silent	Yes	Yes
1	MA000011	Mining Industry Award 2010	Yes	No	Each day or shift stands alone	No	No
1	MA000072	Oil Refining & Manufacturing Award 2010	Yes	No	Each day or shift stands alone	No	No
1	MA000069	Pharmaceutical Industry Award 2010	Yes	No	Award is silent	No	No
1	MA000074	Poultry Processing Award 2010	Yes	No	Award is silent	No	Yes
1	MA000057	Premixed Concrete Award 2010	Yes	No	Each day stands alone	No	No
1	MA000108	Professional Diving Industry (Industrial) Award 2010	Yes	No	Award is silent	No	No
1	MA000109	Professional Diving Industry (Recreational) Award 2010	Yes	No	Award is silent	No	No
1	MA000037	Quarrying Award 2010	Yes	No	Each day stands alone	No	No
1	MA000015	Rail Industry Award 2010	Yes	No	Award is silent	No	No
1	MA000107	Salt Industry Award 2010	Yes	No	Each day stands alone	No	No
1	MA000016	Security Services Industry Award 2010	Yes	No	Award is silent	No	No

Overtime							
Stage	Code	Award	Overtime referred to in clause title?	Hrs when overtime applies clearly stated?	Overtime calculation (daily or wkly basis) expressed as...	Casual entitlement to overtime clearly stated?	Casual loading interaction with overtime clearly stated?
1	MA000053	Stevedoring Industry Award 2010	Yes	No	Award is silent	No	No
1	MA000017	Textile, Clothing, Footwear & Associated Industries Award 2010	Yes	No	Each day stands alone	Yes	No
1	MA000071	Timber Industry Award 2010	Yes	No	Each day stands alone	Yes	Yes
1	MA000089	Vehicle Manufacturing, Repair, Services & Retail Award 2010	Yes	No	Award is silent	No	No
1	MA000044	Wool Storage, Sampling & Testing Award 2010	Yes	No	Each day or shift stands alone	No	No
2	MA000092	Alpine Resorts Award 2010	No	No	Award is silent	Yes	N/A
2	MA000118	Animal Care & Veterinary Services Award 2010	Yes	No	Each day stands alone	No	No
2	MA000114	Aquaculture Industry Award 2010	Yes	Yes	Each day stands alone	Yes	Yes
2	MA000110	Corrections & Detention (Private Sector) Award 2010	Yes	No	Award is silent	Yes	Yes
2	MA000111	Fire Fighting Industry Award 2010	Yes	No	Daily/weekly basis not relevant	N/A	N/A
2	MA000026	Graphic Arts Award 2010	Yes	No	Award is silent	No	No
2	MA000027	Health Professionals & Support Services Award 2010	Yes	No	Award is silent	No	No

Overtime							
Stage	Code	Award	Overtime referred to in clause title?	Hrs when overtime applies clearly stated?	Overtime calculation (daily or wkly basis) expressed as...	Casual entitlement to overtime clearly stated?	Casual loading interaction with overtime clearly stated?
2	MA000008	Horse & Greyhound Training Award 2010	Yes	Yes	Award is silent	No	No
2	MA000031	Medical Practitioners Award 2010	Yes	No	Award is silent	No	No
2	MA000034	Nurses Award 2010	Yes	No	Award is silent	No	No
2	MA000063	Passenger Vehicle Transportation Award 2010	Yes	No	Award is silent	No	No
2	MA000012	Pharmacy Industry Award 2010	Yes	No	Award is silent	Yes	Yes
2	MA000014	Racing Industry Ground Maintenance Award 2010	Yes	Yes	Each day stands alone	No	No
2	MA000039	Road Transport (Long Distance Operations) Award 2010	N/A	N/A	No overtime provisions in Award	N/A	N/A
2	MA000038	Road Transport & Distribution Award 2010	Yes	No	Each day stands alone	Yes	Yes
2	MA000068	Seafood Processing Award 2010	Yes	No	Each day stands alone	No	No
2	MA000084	Storage Services & Wholesale Award 2010	Yes	No	Each day or shift stands alone	No	No
2	MA000042	Transport (Cash in Transit) Award 2010	Yes	No	Each day stands alone	No	No
2	MA000043	Waste Management Award 2010	Yes	No	Each day stands alone	Yes	Yes
3	MA000019	Banking, Finance & Insurance Award	Yes	No	Each day stands alone	No	No

Overtime							
Stage	Code	Award	Overtime referred to in clause title?	Hrs when overtime applies clearly stated?	Overtime calculation (daily or wkly basis) expressed as...	Casual entitlement to overtime clearly stated?	Casual loading interaction with overtime clearly stated?
3	MA000021	Business Equipment Award 2010	Yes	No	Award is silent	No	No
3	MA000002	Clerks – Private Sector Award 2010	Yes	No	Calculated on a daily basis	No	No
3	MA000045	Coal Export Terminals Award 2010	Yes	No	Each day or shift stands alone	No	No
3	MA000083	Commercial Sales Award 2010	Yes	No	Daily/weekly basis not relevant	No	No
3	MA000023	Contract Call Centres Award 2010	Yes	No	Four weekly or weekly basis	No	No
3	MA000085	Dredging Industry Award 2010	Yes	No	Daily/weekly basis not relevant	No	No
3	MA000075	Educational Services (Post-Secondary Education) Award 2010	Yes	No	Calculated on a daily basis	No	No
3	MA000076	Educational Services (Schools) General Staff Award 2010	Yes	No	Calculated on a daily basis	No	No
3	MA000088	Electrical Power Industry Award 2010	Yes	No	Award is silent	No	Yes
3	MA000094	Fitness Industry Award 2010	Yes	Yes	Award is silent	No	No
3	MA000101	Gardening & Landscaping Services Award 2010	Yes	Yes	Award is silent	No	No
3	MA000006	Higher Education – Academic Staff – Award 2010	N/A	N/A	No overtime provisions in Award	N/A	N/A

Overtime							
Stage	Code	Award	Overtime referred to in clause title?	Hrs when overtime applies clearly stated?	Overtime calculation (daily or wkly basis) expressed as...	Casual entitlement to overtime clearly stated?	Casual loading interaction with overtime clearly stated?
3	MA000007	Higher Education – General Staff – Award 2010	Yes	No	Award is silent	No	No
3	MA000028	Horticulture Award 2010	Yes	No	Daily/weekly basis not relevant	No	N/A
3	MA000099	Labour Market Assistance Industry Award 2010	Yes	Yes	Award is silent	Yes	No
3	MA000116	Legal Services Award 2010	Yes	No	Each day stands alone	No	No
3	MA000112	Local Government Industry Award 2010	Yes	Yes	Each day stands alone	Yes	No
3	MA000050	Marine Towage Award 2010	Yes	No	Award is silent	No	No
3	MA000030	Market & Social Research Award 2010	Yes	No	Daily/weekly basis not relevant	No	N/A
3	MA000104	Miscellaneous Award 2010	Yes	Yes	Award is silent	No	N/A
3	MA000033	Nursery Award 2010	Yes	No	Award is silent	No	No
3	MA000035	Pastoral Award 2010	Yes - only for certain types of employees	No	Varies according to employee classification	No	No
3	MA000051	Port Authorities Award 2010	Yes	No	Award is silent	No	No
3	MA000052	Ports, Harbours & Enclosed Water Vessels Award 2010	Yes	No	Award is silent	No	No
3	MA000106	Real Estate Industry Award 2010	Yes	No	Award is silent	No	No

Overtime							
Stage	Code	Award	Overtime referred to in clause title?	Hrs when overtime applies clearly stated?	Overtime calculation (daily or wkly basis) expressed as...	Casual entitlement to overtime clearly stated?	Casual loading interaction with overtime clearly stated?
3	MA000122	Seagoing Industry Award 2010	Yes - only for certain types of employees	No	Daily/weekly basis not relevant	N/A	N/A
3	MA000040	Silviculture Award 2010	Yes	No	Each day stands alone	No	No
3	MA000082	Sporting Organisations Award 2010	Yes	No	Award is silent	No	No
3	MA000121	State Government Agencies Administration Award 2010	Yes	No	Award is silent	No	No
3	MA000087	Sugar Industry Award 2010	Yes	No	Calculated on a daily basis	No	No
3	MA000041	Telecommunications Services Award 2010	Yes	No	Each day stands alone	No	No
3	MA000090	Wine Industry Award 2010	Yes	No	Award is silent	No	No
4	MA000115	Aboriginal Community Controlled Health Services Award 2010	Yes	No	Award is silent	No	No
4	MA000018	Aged Care Award 2010	Yes	No	Award is silent	Yes	No
4	MA000046	Air Pilots Award 2010	N/A	N/A	No overtime provisions in Award	N/A	N/A
4	MA000047	Aircraft Cabin Crew Award 2010	Yes	No	Daily/weekly basis not relevant	No	No
4	MA000048	Airline Operations – Ground Staff Award 2010	Yes	No	Each day stands alone	No	No
4	MA000049	Airport Employees Award 2010	Yes	No	Each day stands alone	No	No

Overtime							
Stage	Code	Award	Overtime referred to in clause title?	Hrs when overtime applies clearly stated?	Overtime calculation (daily or wkly basis) expressed as...	Casual entitlement to overtime clearly stated?	Casual loading interaction with overtime clearly stated?
4	MA000080	Amusement, Events & Recreation Award 2010	Yes	No	Award is silent	Yes	No
4	MA000079	Architects Award 2010	No	No	Daily/weekly basis not relevant	No	No
4	MA000078	Book Industry Award 2010	Yes	No	States rate for first 8 hours in a week and thereafter	Yes	Yes
4	MA000091	Broadcasting & Recorded Entertainment Award 2010	Yes	No	Varies according to employee classification	No	No
4	MA000020	Building & Construction General On-site Award 2010	Yes	No	Award is silent	Yes	Yes
4	MA000095	Car Parking Award 2010	Yes	No	Each day stands alone	Yes	No
4	MA000070	Cemetery Industry Award 2010	Yes	No	Each day stands alone	No	No
4	MA000120	Children's Services Award 2010	Yes	No	Each day stands alone	Yes	No
4	MA000096	Dry Cleaning & Laundry Industry Award 2010	Yes	No	Each day stands alone	Yes	No
4	MA000077	Educational Services (Teachers) Award 2010	Yes	No	Award is silent	No	No
4	MA000025	Electrical, Electronic & Communications Contracting Award 2010	Yes	No	Each day stands alone	Yes	No
4	MA000003	Fast Food Industry Award 2010	Yes	No	Award is silent	No	N/A
4	MA000073	Food, Beverage & Tobacco Manufacturing	Yes	No	Each day stands alone	No	No

Overtime							
Stage	Code	Award	Overtime referred to in clause title?	Hrs when overtime applies clearly stated?	Overtime calculation (daily or wkly basis) expressed as...	Casual entitlement to overtime clearly stated?	Casual loading interaction with overtime clearly stated?
		Award 2010					
4	MA000105	Funeral Industry Award 2010	Yes	No	Award is silent	No	No
4	MA000004	General Retail Industry Award 2010	Yes	No	Calculated on a daily basis	No	N/A
4	MA000005	Hair & Beauty Industry Award 2010	Yes	No	Award is silent	Yes	N/A
4	MA000009	Hospitality Industry (General) Award 2010	No	No	Each day stands alone	Yes	N/A
4	MA000064	Hydrocarbons Field Geologists Award 2010	N/A	N/A	No overtime provisions in Award	N/A	N/A
4	MA000029	Joinery & Building Trades Award 2010	Yes	No	Award is silent	Yes	Yes
4	MA000067	Journalists Published Media Award 2010	Yes	No	Award is silent	Yes	Yes
4	MA000081	Live Performance Award 2010	Yes	No	Award is silent	No	No
4	MA000117	Mannequins & Models Award 2010	Yes	No	Award is silent	No	N/A
4	MA000032	Mobile Crane Hiring Award 2010	Yes	No	Award is silent	Yes	Yes
4	MA000097	Pest Control Industry Award 2010	Yes	No	Each day stands alone	No	No
4	MA000036	Plumbing & Fire Sprinklers Award 2010	Yes	No	Award is silent	No	No
4	MA000065	Professional Employees Award 2010	N/A	N/A	No overtime provisions in Award	N/A	N/A

Overtime							
Stage	Code	Award	Overtime referred to in clause title?	Hrs when overtime applies clearly stated?	Overtime calculation (daily or wkly basis) expressed as...	Casual entitlement to overtime clearly stated?	Casual loading interaction with overtime clearly stated?
4	MA000013	Racing Clubs Events Award 2010	Yes	Yes	Each day stands alone	No	No
4	MA000058	Registered & Licensed Clubs Award 2010	Yes	No	Each day stands alone	No	N/A
4	MA000119	Restaurant Industry Award 2010	Yes	No	Each day stands alone	No	N/A
4	MA000100	Social, Community, Home Care & Disability Services Industry Award 2010	Yes	No	Award is silent	Yes	Yes
4	MA000103	Supported Employment Services Award 2010	Yes	No	Each day stands alone	No	Yes
4	MA000066	Surveying Award 2010	Yes	No	Award is silent	No	No
4	MA000102	Travelling Shows Award 2010	Yes	No	Award is silent	Yes	No
4	MA000113	Water Industry Award 2010	Yes	Yes	Each day stands alone	Yes	No

Penalties					
Stage	Code	Award	Does the clause title contain the word 'penalties'?	Hours when penalties apply clearly stated?	Casual loading interaction with penalty clearly stated?
1	MA000060	Aluminium Industry Award 2010	Yes	No	No
1	MA000098	Ambulance & Patient Transport Industry Award 2010	Yes - but clause does not contain penalty rates	No	Yes
1	MA000054	Asphalt Industry Award 2010	Yes - but clause does not contain penalty rates	No	No
1	MA000001	Black Coal Mining Industry Award 2010	No	No	No
1	MA000055	Cement & Lime Award 2010	No	No	No
1	MA000022	Cleaning Services Award 2010	Yes	Yes	Yes
1	MA000056	Concrete Products Award 2010	No	No	No
1	MA000024	Cotton Ginning Award 2010	No	No	Yes
1	MA000061	Gas Industry Award 2010	Yes - but clause does not contain penalty rates	No	No
1	MA000062	Hydrocarbons Industry (Upstream) Award 2010	Yes	No	No
1	MA000010	Manufacturing & Associated Industries & Occupations Award 2010	No	Yes	No
1	MA000093	Marine Tourism & Charter Vessels Award 2010	Yes - but clause does not contain penalty rates	No	No
1	MA000086	Maritime Offshore Oil & Gas Award 2010	N/A	N/A	N/A

Penalties					
Stage	Code	Award	Does the clause title contain the word 'penalties'?	Hours when penalties apply clearly stated?	Casual loading interaction with penalty clearly stated?
1	MA000059	Meat Industry Award 2010	No	No	Yes
1	MA000011	Mining Industry Award 2010	Yes	No	No
1	MA000072	Oil Refining & Manufacturing Award 2010	Yes	No	No
1	MA000069	Pharmaceutical Industry Award 2010	Yes	No	No
1	MA000074	Poultry Processing Award 2010	No	No	No
1	MA000057	Premixed Concrete Award 2010	No	No	No
1	MA000108	Professional Diving Industry (Industrial) Award 2010	Yes - but clause does not contain penalty rates	No	No
1	MA000109	Professional Diving Industry (Recreational) Award 2010	N/A	N/A	N/A
1	MA000037	Quarrying Award 2010	No	No	No
1	MA000015	Rail Industry Award 2010	Yes	No	No
1	MA000107	Salt Industry Award 2010	N/A	No	No
1	MA000016	Security Services Industry Award 2010	Yes	No	No
1	MA000053	Stevedoring Industry Award 2010	Yes - but clause does not contain penalty rates	No	No

Penalties					
Stage	Code	Award	Does the clause title contain the word 'penalties'?	Hours when penalties apply clearly stated?	Casual loading interaction with penalty clearly stated?
1	MA000017	Textile, Clothing, Footwear & Associated Industries Award 2010	No	No	No
1	MA000071	Timber Industry Award 2010	Yes	No	Yes
1	MA000089	Vehicle Manufacturing, Repair, Services & Retail Award 2010	No	No	No
1	MA000044	Wool Storage, Sampling & Testing Award 2010	Yes	No	No
2	MA000092	Alpine Resorts Award 2010	Yes	No	No
2	MA000118	Animal Care & Veterinary Services Award 2010	Yes	No	No
2	MA000114	Aquaculture Industry Award 2010	No	No	Yes
2	MA000110	Corrections & Detention (Private Sector) Award 2010	Yes	No	Yes
2	MA000111	Fire Fighting Industry Award 2010	Yes	No	N/A
2	MA000026	Graphic Arts Award 2010	Yes	No	No
2	MA000027	Health Professionals & Support Services Award 2010	Yes - but clause does not contain penalty rates	No	Yes
2	MA000008	Horse & Greyhound Training Award 2010	Yes - but clause does not contain penalty rates	No	No

Penalties					
Stage	Code	Award	Does the clause title contain the word 'penalties'?	Hours when penalties apply clearly stated?	Casual loading interaction with penalty clearly stated?
2	MA000031	Medical Practitioners Award 2010	No	No	No
2	MA000034	Nurses Award 2010	No	No	No
2	MA000063	Passenger Vehicle Transportation Award 2010	Yes	No	No
2	MA000012	Pharmacy Industry Award 2010	No	No	No
2	MA000014	Racing Industry Ground Maintenance Award 2010	Yes	No	No
2	MA000039	Road Transport (Long Distance Operations) Award 2010	No	No	No
2	MA000038	Road Transport & Distribution Award 2010	Yes	No	No
2	MA000068	Seafood Processing Award 2010	No	No	No
2	MA000084	Storage Services & Wholesale Award 2010	Yes	No	No
2	MA000042	Transport (Cash in Transit) Award 2010	No	No	No
2	MA000043	Waste Management Award 2010	No	No	No
3	MA000019	Banking, Finance & Insurance Award	Yes - but clause does not contain penalty rates	No	No
3	MA000021	Business Equipment Award 2010	No	No	No

Penalties					
Stage	Code	Award	Does the clause title contain the word 'penalties'?	Hours when penalties apply clearly stated?	Casual loading interaction with penalty clearly stated?
3	MA000002	Clerks – Private Sector Award 2010	Yes	No	No
3	MA000045	Coal Export Terminals Award 2010	No	No	No
3	MA000083	Commercial Sales Award 2010	Yes	No	No
3	MA000023	Contract Call Centres Award 2010	Yes	No	No
3	MA000085	Dredging Industry Award 2010	Yes	No	No
3	MA000075	Educational Services (Post-Secondary Education) Award 2010	Yes	No	No
3	MA000076	Educational Services (Schools) General Staff Award 2010	Yes	No	No
3	MA000088	Electrical Power Industry Award 2010	Yes	No	No
3	MA000094	Fitness Industry Award 2010	Yes	No	No
3	MA000101	Gardening & Landscaping Services Award 2010	Yes	No	No
3	MA000006	Higher Education – Academic Staff – Award 2010	N/A	N/A	N/A
3	MA000007	Higher Education – General Staff – Award 2010	Yes	No	No
3	MA000028	Horticulture Award 2010	No	No	No

Penalties					
Stage	Code	Award	Does the clause title contain the word 'penalties'?	Hours when penalties apply clearly stated?	Casual loading interaction with penalty clearly stated?
3	MA000099	Labour Market Assistance Industry Award 2010	Yes	No	No
3	MA000116	Legal Services Award 2010	Yes	No	No
3	MA000112	Local Government Industry Award 2010	Yes	No	No
3	MA000050	Marine Towing Award 2010	Yes - but clause does not contain penalty rates	No	No
3	MA000030	Market & Social Research Award 2010	Yes	No	No
3	MA000104	Miscellaneous Award 2010	Yes	No	No
3	MA000033	Nursery Award 2010	Yes	No	No
3	MA000035	Pastoral Award 2010	Yes - only for certain employee types	No	No
3	MA000051	Port Authorities Award 2010	Yes	No	No
3	MA000052	Ports, Harbours & Enclosed Water Vessels Award 2010	Yes	No	No
3	MA000106	Real Estate Industry Award 2010	No	No	No
3	MA000122	Seagoing Industry Award 2010	N/A	N/A	N/A
3	MA000040	Silviculture Award 2010	Yes	No	No
3	MA000082	Sporting Organisations Award 2010	Yes - but clause does not contain penalty rates	No	No

Penalties					
Stage	Code	Award	Does the clause title contain the word 'penalties'?	Hours when penalties apply clearly stated?	Casual loading interaction with penalty clearly stated?
3	MA000121	State Government Agencies Administration Award 2010	Yes	No	No
3	MA000087	Sugar Industry Award 2010	Yes - but clause does not contain penalty rates	No	No
3	MA000041	Telecommunications Services Award 2010	No	No	No
3	MA000090	Wine Industry Award 2010	No	No	No
4	MA000115	Aboriginal Community Controlled Health Services Award 2010	Yes - but clause does not contain penalty rates	No	Yes
4	MA000018	Aged Care Award 2010	No	No	Yes
4	MA000046	Air Pilots Award 2010	N/A	N/A	N/A
4	MA000047	Aircraft Cabin Crew Award 2010	N/A	N/A	N/A
4	MA000048	Airline Operations – Ground Staff Award 2010	No	No	No
4	MA000049	Airport Employees Award 2010	Yes - but clause does not contain penalty rates	No	No
4	MA000080	Amusement, Events & Recreation Award 2010	Yes	No	No
4	MA000079	Architects Award 2010	N/A	N/A	N/A
4	MA000078	Book Industry Award 2010	N/A	N/A	N/A
4	MA000091	Broadcasting & Recorded Entertainment Award 2010	Varies according to employee classification	No	No

Penalties					
Stage	Code	Award	Does the clause title contain the word 'penalties'?	Hours when penalties apply clearly stated?	Casual loading interaction with penalty clearly stated?
4	MA000020	Building & Construction General On-site Award 2010	Yes	No	Yes
4	MA000095	Car Parking Award 2010	Yes	No	No
4	MA000070	Cemetery Industry Award 2010	Yes - but clause does not contain penalty rates	No	No
4	MA000120	Children's Services Award 2010	Yes	No	No
4	MA000096	Dry Cleaning & Laundry Industry Award 2010	Yes	No	No
4	MA000077	Educational Services (Teachers) Award 2010	N/A	N/A	N/A
4	MA000025	Electrical, Electronic & Communications Contracting Award 2010	N/A	N/A	N/A
4	MA000003	Fast Food Industry Award 2010	No	No	Yes
4	MA000073	Food, Beverage & Tobacco Manufacturing Award 2010	No	Yes	No
4	MA000105	Funeral Industry Award 2010	Yes	No	No
4	MA000004	General Retail Industry Award 2010	Yes	No	No
4	MA000005	Hair & Beauty Industry Award 2010	Yes	No	Yes
4	MA000009	Hospitality Industry (General) Award 2010	Yes	No	Yes

Penalties					
Stage	Code	Award	Does the clause title contain the word 'penalties'?	Hours when penalties apply clearly stated?	Casual loading interaction with penalty clearly stated?
4	MA000064	Hydrocarbons Field Geologists Award 2010	N/A	N/A	N/A
4	MA000029	Joinery & Building Trades Award 2010	No	Yes	No
4	MA000067	Journalists Published Media Award 2010	Yes - but clause does not contain penalty rates	No	Yes
4	MA000081	Live Performance Award 2010	Varies according to employee classification	No	Yes - only for certain employee types
4	MA000117	Mannequins & Models Award 2010	Yes	No	N/A
4	MA000032	Mobile Crane Hiring Award 2010	N/A	N/A	N/A
4	MA000097	Pest Control Industry Award 2010	Yes	No	No
4	MA000036	Plumbing & Fire Sprinklers Award 2010	Yes	No	No
4	MA000065	Professional Employees Award 2010	N/A	N/A	N/A
4	MA000013	Racing Clubs Events Award 2010	Yes	No	No
4	MA000058	Registered & Licensed Clubs Award 2010	Yes	No	Yes
4	MA000119	Restaurant Industry Award 2010	Yes	No	Yes
4	MA000100	Social, Community, Home Care & Disability Services Industry Award 2010	Yes - but clause does not contain penalty rates	No	Yes

Penalties

Stage	Code	Award	Does the clause title contain the word 'penalties'?	Hours when penalties apply clearly stated?	Casual loading interaction with penalty clearly stated?
4	MA000103	Supported Employment Services Award 2010	Yes - but clause does not contain penalty rates	No	Yes
4	MA000066	Surveying Award 2010	Yes	No	No
4	MA000102	Travelling Shows Award 2010	Yes	No	Yes
4	MA000113	Water Industry Award 2010	No	Yes	No

APPENDIX G: Exemplar Pay Rates Table

Draft Pay Rates Tables: Modern Award title [MA000####]

[Type of employee] employees: Modern Award title [MA000####]

	Base rates		Penalty rates				Shiftwork				Overtime	
	Weekly base rate	Hourly base rate	[Penalty type]	[Penalty type]	[Penalty type]	[Penalty type]	[Shift type]	[Shift type]	[Shift type]	[Shift type]	First [2/3] hrs	Thereafter
	Rate of pay for each week, based on 38 ordinary hrs of work	Rate of pay for each ordinary hr of work	[Ordinary hrs worked/ All hrs worked/ Other specified hrs]	[Ordinary hrs worked/ All hrs worked/ Other specified hrs]	[Ordinary hrs worked/ All hrs worked/ Other specified hrs]	[Ordinary hrs worked/ All hrs worked/ Other specified hrs]	[Ordinary hrs worked/ All hrs worked/ Other specified hrs]	[Ordinary hrs worked/ All hrs worked/ Other specified hrs]	[Ordinary hrs worked/ All hrs worked/ Other specified hrs]	[Ordinary hrs worked/ All hrs worked/ Other specified hrs]	[When/ how it applies]	[When/ how it applies]
Classification	Base rate (weekly)	Base rate (hourly)	Base rate + [##]%	Base rate + [##]%	Base rate + [##]%							
[Classification 1]												
[Classification 2]												
[Classification 3]												
[Classification 4]												
[Classification 5]												
[Classification 6]												
[Classification 7]												
[Classification 8]												
[Classification 9]												
[Classification 10]												
[Classification 11]												
[Classification 12]												
[Classification 13]												
[Classification 14]												
[Classification 15]												
[Classification 16]												

	Base rates		Penalty rates				Shiftwork				Overtime	
	Weekly base rate	Hourly base rate	[Penalty type]	[Penalty type]	[Penalty type]	[Penalty type]	[Shift type]	[Shift type]	[Shift type]	[Shift type]	First [2/3] hrs	Thereafter
	Rate of pay for each week, based on 38 ordinary hrs of work	Rate of pay for each ordinary hr of work	[Ordinary hrs worked/ All hrs worked/ Other specified hrs]	[Ordinary hrs worked/ All hrs worked/ Other specified hrs]	[Ordinary hrs worked/ All hrs worked/ Other specified hrs]	[Ordinary hrs worked/ All hrs worked/ Other specified hrs]	[Ordinary hrs worked/ All hrs worked/ Other specified hrs]	[Ordinary hrs worked/ All hrs worked/ Other specified hrs]	[Ordinary hrs worked/ All hrs worked/ Other specified hrs]	[Ordinary hrs worked/ All hrs worked/ Other specified hrs]	[When/ how it applies]	[When/ how it applies]
Classification	Base rate (weekly)	Base rate (hourly)	Base rate + [##]%	Base rate + [##]%	Base rate + [##]%							
[Classification 17]												
[Classification 18]												
[Classification 19]												
[Classification 20]												

Note: These rates were calculated by dividing the weekly modern award rate by 38 and retaining 6 decimal places throughout the calculation of all other rates.

2014 Modern Awards Review

Fair Work Ombudsman – Key Operational Statistics

April 2014

About the FWO

1. As the independent national workplace relations regulator who assists employers and employees understand their rights and obligations, the Office of the Fair Work Ombudsman (**FWO**) promotes compliance with the *Fair Work Act 2009 (FW Act)* and fair work instruments, including modern awards (ss 682(1)(b) of the FW Act). In the exercise of its functions, the FWO is involved in numerous interactions with workplace participants, ranging from unrepresented employers and employees through to parties represented by employer organisations or unions.
2. In providing high level data arising from the FWO's interactions with workplace participants, the FWO seeks to assist the Commission identify ways in which modern awards could be simplified and/or clarified so as to achieve the modern award objectives, and in particular, the need to ensure a simple and easy to understand modern awards system (ss 134(1)(g) of the FW Act).

FWO data and research

(i) Complaints data

3. In the 2013 calendar year, the FWO finalised 25,497 complaints.¹ The percentage breakdown of the top ten industries in which complaints were finalised is set out in the table below, with many of these industries having a high level of award reliance²:

Industry	% of total complaints
Accommodation and Food Services	12%
Construction	10%
Retail Trade	9%
Administrative and Support Services	7%
Manufacturing	7%
Other Services (includes Hair & Beauty)	7%
Transport, Postal and Warehousing	6%
Professional, Scientific and Technical Services	5%
Wholesale Trade	5%
Health Care and Social Assistance	5%

¹ A complaint is a formal written request from an individual alleging non-compliance with the *Fair Work Act 2009 (Cth)* by a current or former employer or business.

² [Fair Work Commission's Research Report 6/2013 - Award Reliance](#), December 2013, pp. 11, 25 and 56 and 69.

4. The percentage breakdown of the top five allegation types made in complaints were:

Allegation Type	%
Wages	58%
Annual Leave and/or Annual Leave Loading	13%
Notice or Payment in Lieu	7%
Redundancy	3%
Overtime	3%

(ii) Targeted education campaigns data

5. In monitoring compliance with the FW Act, the FWO regularly conducts targeted education campaigns in specific industry sectors with low levels of compliance. Industries are identified through complaints and industry research. As part of a targeted education campaign, the FWO will audit time and wage records to ensure compliance with monetary and recordkeeping obligations contained within the FW Act, the *Fair Work Regulations 2009* and the relevant modern award.
6. **Appendix A** sets out the key findings of the FWO’s national targeted education campaigns in 2012 – 2013. These findings include a:
- 6.1 28% contravention rate in respect of those businesses audited in the *Structural Metal Product Manufacturing Campaign* (34% of the contraventions related to underpayment of hourly rates and 7% related to the underpayment of overtime)³;
- 6.2 55% contravention rate in respect of those businesses audited in the *National Hair and Beauty Campaign 2012–2013* (44% of the contraventions related to underpayment of the hourly rate, 17% related to underpayment of penalty rates, 2% related to underpayment of overtime, and 1% related to underpayment of allowances)⁴;
- 6.3 31% contravention rate in respect of those businesses audited in the *National Hospitality Campaign 2012–2013 (Accommodation, pubs, taverns and bars)* (41% of the contraventions related to underpayment of hourly rate, 19% related to underpayment of penalty rates, 2% related to underpayment of allowances and 1% related to underpayment of overtime)⁵; and
- 6.4 25% contravention rate in respect of those businesses audited in the *Pharmacy Campaign* (54% of contraventions related to the underpayment of hourly rate, 22% related to underpayment of penalty rates and 6% related to allowances)⁶.

³ [National Structural Metal Product Manufacturing Campaign 2012-2013](#) p 4.

⁴ [National Hair and Beauty Campaign 2012-2013](#) p 6.

⁵ [National Hospitality Campaign 2012-2012 \(Accommodation, pubs, taverns and bars\)](#) p 11.

⁶ [National Pharmacy Campaign 2012-2013](#) p 9.

7. In addition to the national targeted education campaigns conducted in 2012 – 2013, the FWO has also conducted national targeted education campaigns in the security, cleaning and retail industries. These campaigns found a:
- 7.1 25% contravention rate in respect of those businesses audited in the *National Security Industry Follow-up Campaign 2011* (36% of the contraventions related to underpayment of wages, 18% related to penalties, 5% related to loadings, 5% related to overtime and 9% related to public holidays)⁷;
 - 7.2 37% contravention rate in respect of those businesses audited in the *National Cleaning Services Campaign 2010–11* (48% of the contraventions related to underpayment of wages, 12% related to underpayment of penalty rates and 1% related to underpayment of loadings)⁸; and
 - 7.3 26% contravention rate in respect of those businesses audited in the *National Retail Industry Campaign 2010–2011* (41% of the contraventions related to underpayment of wages, 9% related to penalty rates, 4% related to overtime, 2% related to public holidays and 2% related to casual loadings)⁹.
8. The outcomes for the national targeted education campaigns listed above at paragraphs six and seven illustrates that a significant proportion of contraventions identified relate to the underpayment of entitlements payable under modern awards.

(iii) Enquiries data

9. The Fair Work Infoline provides education, advice and assistance to workplace participants. In 2013, the Fair Work Infoline received 494,289 enquiries. Approximately 63% of all enquiries were identified as relating to modern awards. Of the enquiries relating to modern awards, the percentage breakdown of the top ten industries is set out in the table below, with many of these industries having a high level of award reliance¹⁰:

Industry	%
Other Services (includes Hair & Beauty)	14%
Construction	14%
Retail Trade	12%
Accommodation and Food Services	10%
Manufacturing	7%
Health Care and Social Assistance	7%

⁷ [National Security Industry Follow - up Campaign 2011 Report](#) at pp. 7-8.

⁸ [National Cleaning Services Campaign 2010-11](#) at pp 4 and 10.

⁹ [National Retail Industry Campaign 2010-2011](#) at p 14.

¹⁰ [Fair Work Commission's Research Report 6/2013 - Award Reliance](#), December 2013, pp. 11, 25 and 56 and 69.

Industry	%
Admin and Support Services	6%
Transport, Postal and Warehousing	4%
Professional, Scientific and Technical	4%
Wholesale Trade	4%

10. The percentage breakdown of the top five enquiry types in relation to modern awards were:

Enquiry Type	%
Wages	39%
Conditions	18%
Termination of Employment	16%
Leave	9%
Entitlements	7%

(iv) Online wage rate information data

11. [Pay Check Plus](http://fairwork.gov.au) is an online tool available at fairwork.gov.au which provides wage rate information by assisting users to calculate base rates of pay, allowances, overtime, and penalty rates. As illustrated by **Appendix B**, in 2013, almost 1.2 million searches were conducted on Pay Check Plus illustrating that many award users are referring to extraneous tools and resources for wage rate information.

APPENDIX A – Targeted Education Campaigns 2013

National Structural Metal Product Manufacturing Campaign 2012

Stakeholder engagement (conducted during Jan 2012)	Award coverage	Final report	Overall findings	Contravention types
<ul style="list-style-type: none"> Australian Manufacturing Workers Union (AMWU) Australian Steel Institute (ASI) Australian Industry Group (AiG) Australian Chamber of Commerce and Industry (ACCI) 	Manufacturing and Associated Industries and Occupations Award 2010 (MA000010)	Published Jan 2013 link	Completed audits – 253 <ul style="list-style-type: none"> Compliant – 182 (72%) In Contravention – 71 (28%) <ul style="list-style-type: none"> 16% technical contraventions 10% underpayment contraventions 2% both technical & underpayment contraventions Money Recovered – \$51,848 for 37 employees	Payslips – 49% Underpayment of hourly rate – 34% Record Keeping – 10% Underpayment of Overtime – 7%

Additional stakeholders

- Australian Apprenticeship & Traineeship Information Service
- Australian Chamber of Commerce
- Business SA
- Council of Small Business of Australia
- Department of Industry, Innovation, Science, Research and Tertiary Education
- Group Training Australia
- Manufacturing Skills Australia
- Master Builders Australia
- Northern Territory Chamber of Commerce
- Queensland Chamber of Commerce and Industry
- Sydney Business Chamber
- Tasmanian Chamber of Commerce & Industry
- Victorian Employers' Chamber of Commerce & Industry
- WA Chamber of Commerce & Industry

Pre-modern awards

- Clerks (Commercial, Social and Professional Services) Award [AN160066]
- Draughtsmen's, Tracers, Planners and Technical Officers Award (WA) 1979 [AN160100]
- Metal, Engineering and Associated Industries Award 1998 [AP789529]
- Metal, Engineering and Associated Industries (NSW) Award [AN120334]
- Metal and Engineering Industry Award (Tasmania) [AN170120]
- Metal Industry (Northern Territory) Award 2003 [AP825130]
- Metal Industry (South Australia) Award [AN150082]
- Metal Trades (Australian Capital Territory) Award 2000 [AP787983]
- Metal Trades (General) Award (WA) 1966 [AN160206]
- Sheet Metal Workers Award (WA) [AN160290]

National Hair and Beauty Campaign 2013

Stakeholder engagement (conducted during June 2012)	Award coverage	Final report	Overall findings	Contravention types
<ul style="list-style-type: none"> Hair and Beauty Australia Industry Association (HABA) Hairdressing and Beauty Industry Association (HBIA) Shop Distributive and Allied Employees Association 	Hair and Beauty Industry Award 2010 (MA000005)	Published July 2013 link	Completed audits – 858 <ul style="list-style-type: none"> Compliant – 384 (45%) In Contravention – 474 (55%) <ul style="list-style-type: none"> 15% technical contraventions 28% underpayment contraventions 12% both technical & underpayment contraventions Money Recovered – \$369,770 for 295 employees	Underpayment of hourly rate – 44% Payslips – 32% Underpayment of penalty rates – 17% Record Keeping – 3% Underpayment of Overtime – 2% Leave entitlements – 1% Allowances – 1%

Pre-modern awards

- AT 806816 Hairdressing and Beauty Services – Victoria Award 2001
- AT 818691 Hairdressing and Beauty Industry (Northern Territory) Award 2002 Other Services
- AP806816 Hairdressing and Beauty Services – Victoria – Award 2001 Other Services
- AP783495 Hairdressing and Beauty Industry (Australian Capital Territory) Award 1998 Other Services
- AN170042 Hairdressing, Health and Beauty Industry Award Other Services
- AN160153 Hairdressers Award 1989 Other Services
- AN150062 Hairdressers and Beauty Salons Award Other Services
- AN140140 Hairdressers Industry Award – State 2003 Other Services
- AN140026 Beauty Therapy Industry Award – State 2003 Other Services
- AN120242 Hairdressers, etc (State) Award Other Services

National Hospitality Campaign – Wave 1 2013 (Accommodation, pubs, taverns & bars)

Stakeholder engagement (conducted during July 2012)	Award coverage	Final report	Overall findings	Contravention types
<ul style="list-style-type: none"> • Australian Hotels Association (AHA) • Accommodation Association of Australia (AAA) • United Voice • Australian Resident Accommodation Managers Association • Services Industry Legal Services 	Hospitality Industry (General) Award 2010 (MA000009)	Published Dec 2013 link	Completed audits – 750 <ul style="list-style-type: none"> • Compliant – 515 (69%) • In Contravention – 235 (31%) <ul style="list-style-type: none"> ○ 12% technical contraventions ○ 16% underpayment contraventions ○ 3% both technical & underpayment contraventions Money Recovered – \$367,116 for 629 employees	Underpayment of hourly rate – 41% Payslips – 31% Underpayment of penalty rates – 19% Record Keeping – 6% Allowances – 2% Underpayment of Overtime – 1%

• 46 x pre-modern awards

National Pharmacy Campaign 2012–13

Stakeholder engagement (conducted during Nov 2012)	Award coverage	Final report	Overall findings	Contravention types
<ul style="list-style-type: none"> The Pharmacy Guild of Australia Shop Distributive and Allied Employees Association Association of Professional Engineers Scientists and Managers Australia (APESMA) Pharmacy Board of Australia Australian Friendly Society Pharmacies Association 	Pharmacy Industry Award 2010 (MA000012)	Published Dec 2013 link	Completed audits – 523 <ul style="list-style-type: none"> Compliant – 391 (75%) In Contravention – 132 (25%) <ul style="list-style-type: none"> 19% underpayment contraventions 4% technical contraventions 2% both technical & underpayment contraventions Money Recovered – \$280,912 for 599 employees	Underpayment of hourly rate – 54% Underpayment of penalty rates – 22% Payslips – 14% Record Keeping – 4% Allowances – 6%

Resource developed as part of Campaign information and awareness phase – [Pharmacy Industry Handbook](#) (co-badged with The Pharmacy Guild of Australia)

Pre-modern awards

- AT796289 Shop, Distributive and Allied Employees' Association – Victorian Pharmacy Assistants Award 2000
- AT773671 Community Pharmacy Award 1998
- AP806529 SDA Western Australian Community Pharmacy – Pharmacy Assistants Award 2000
- AP796289 Shop, Distributive and Allied Employees' Association – Victorian Pharmacy Assistants Award 2000
- AP795238 Retail Trade Industry Sector – Minimum Wage Order – Victoria 1997
- AP794741 Retail, Wholesale and Distributive Employees (NT) Award 2000
- AP773671 Community Pharmacy Award 1998
- AP772207 Chemists (Australian Capital Territory) Award 2000
- AN170087 Retail Pharmacy Award
- AN160292 Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977
- AN160277 Retail Pharmacists Award 2004
- AN150131 Retail Pharmaceutical Chemists Award
- AN140207 Pharmacy Assistants Award – State 2003
- AN140206 Pharmaceutical Employees Award – State (exclusive of Public Hospitals) 2003
- AN120416 Pharmacy Assistants (State) Award
- AN120152 Community Pharmacy (State) Award 2001

APPENDIX B – Modern Award Selections in Pay Check Plus

2013 Calendar Year (includes internal and external searches)			
MA Code	MA Title	Totals	Rank
MA000004	General Retail Industry Award 2010	196914	1
MA000119	Restaurant Industry Award 2010	96104	2
MA000005	Hair and Beauty Industry Award 2010	90572	3
MA000003	Fast Food Industry Award 2010	87834	4
MA000002	Clerks Private Sector Award 2010	85082	5
MA000009	Hospitality Industry (General) Award 2010	80529	6
MA000020	Building and Construction General On-site Award 2010	79057	7
MA000089	Vehicle Manufacturing, Repair, Services and Retail Award 2010	52608	8
MA000025	Electrical, Electronic and Communications Contracting Award 2010	35455	9
MA000027	Health Professionals and Support Services Award 2010	34220	10
MA000120	Children's Services Award 2010	26309	11
MA000036	Plumbing and Fire Sprinklers Award 2010	26238	12
MA000010	Manufacturing and Associated Industries and Occupations Award 2010	25837	13
MA000038	Road Transport and Distribution Award 2010	16208	14
MA000012	Pharmacy Industry Award 2010	15608	15
MA000084	Storage Services and Wholesale Award 2010	14367	16
MA000058	Registered and Licensed Clubs Award 2010	12288	17
MA000016	Security Services Industry Award 2010	11898	18
MA000029	Joinery and Building Trades Award 2010	9544	19
MA000021	Business Equipment Award 2010	8391	20
MA000019	Banking, Finance and Insurance Award 2010	8145	21
MA000034	Nurses Award 2010	8085	22
MA000039	Road Transport (Long Distance Operations) Award 2010	8066	23
MA000041	Telecommunications Services Award 2010	8000	24
MA000023	Contract Call Centres Award 2010	7510	25
MA000101	Gardening and Landscaping Services Award 2010	7073	26
MA000018	Aged Care Award 2010	6920	27
MA000073	Food, Beverage and Tobacco Manufacturing Award 2010	6890	28
MA000106	Real Estate Industry Award 2010	6018	29
MA000001	Black Coal Mining Industry Award 2010	5856	30
MA000026	Graphic Arts, Printing and Publishing Award 2010	5842	31
MA000077	Educational Services (Teachers) Award 2010	5735	32
MA000017	Textile, Clothing, Footwear and Associated Industries Award 2010	5556	33
MA000059	Meat Industry Award 2010	5354	34

2013 Calendar Year (includes internal and external searches)			
MACode	MA Title	Totals	Rank
MA000071	Timber Industry Award 2010	5335	35
MA000028	Horticulture Award 2010	5270	36
MA000076	Educational Services (Schools) General Staff Award 2010	5037	37
MA000118	Animal Care and Veterinary Services Award 2010	4916	38
MA000099	Labour Market Assistance Industry Award 2010	4889	39
MA000083	Commercial Sales Award 2010	4849	40
MA000080	Amusement, Events and Recreation Award 2010	4705	41
MA000116	Legal Services Award 2010	4438	42
MA000043	Waste Management Award 2010	3397	43
MA000063	Passenger Vehicle Transportation Award 2010	3276	44
MA000103	Supported Employment Services Award 2010	3121	45
MA000079	Architects Award 2010	3073	46
MA000065	Professional Employees Award 2010	2808	47
MA000090	Wine Industry Award 2010	2757	48
MA000094	Fitness Industry Award 2010	2343	49
MA000091	Broadcasting and Recorded Entertainment Award 2010	2164	50
MA000033	Nursery Award 2010	2030	51
MA000075	Educational Services (Post-secondary Education) Award 2010	1862	52
MA000082	Sporting Organisations Award 2010	1838	53
MA000112	Local Government Industry Award 2010	1570	54
MA000096	Dry Cleaning and Laundry Industry Award 2010	1322	55
MA000088	Electrical Power Industry Award 2010	1282	56
MA000037	Quarrying Award 2010	1238	57
MA000069	Pharmaceutical Industry Award 2010	1171	58
MA000008	Horse and Greyhound Training Award 2010	1118	59
MA000085	Dredging Industry Award 2010	1084	60
MA000031	Medical Practitioners Award 2010	1038	61
MA000015	Rail Industry Award 2010	1003	62
MA000011	Mining Industry Award 2010	931	63
MA000066	Surveying Award 2010	929	64
MA000121	State Government Agencies Administration Award 2010	878	65
MA000014	Racing Industry Ground Maintenance Award 2010	797	66
MA000054	Asphalt Industry Award 2010	557	67
MA000097	Pest Control Industry Award 2010	533	68
MA000095	Car Parking Award 2010	523	69
MA000067	Journalists Published Media Award 2010	403	70

2013 Calendar Year (includes internal and external searches)			
MACode	MA Title	Totals	Rank
MA000048	Airline Operations Ground Staff Award 2010	362	71
MA000074	Poultry Processing Award 2010	359	72
MA000081	Live Performance Award 2010	303	73
MA000105	Funeral Industry Award 2010	302	74
MA000042	Transport (Cash In Transit) Award 2010	301	75
MA000068	Seafood Processing Award 2010	278	76
MA000006	Higher Education Industry Academic Staff Award 2010	273	77
MA000057	Premixed Concrete Award 2010	270	78
MA000113	Water Industry Award 2010	229	79
MA000056	Concrete Products Award 2010	208	80
MA000093	Marine Tourism and Charter Vessels Award 2010	204	81
MA000087	Sugar Industry Award 2010	202	82
MA000114	Aquaculture Industry Award 2010	136	83
MA000098	Ambulance and Patient Transport Industry Award 2010	123	84
MA000052	Ports, Harbours and Enclosed Water Vessels Award 2010	90	85
MA000030	Market and Social Research Award 2010	83	86
MA000115	Aboriginal Community Controlled Health Services Award 2010	82	87
MA000050	Marine Towage Award 2010	74	88
MA000046	Air Pilots Award 2010	45	89
MA000049	Airport Employees Award 2010	43	90
MA000007	Higher Education Industry General Staff Award 2010	43	91
MA000078	Book Industry Award 2010	39	92
MA000013	Racing Clubs Events Award 2010	35	93
MA000032	Mobile Crane Hiring Award 2010	34	94
MA000024	Cotton Ginning Award 2010	29	95
MA000061	Gas Industry Award 2010	26	96
MA000102	Travelling Shows Award 2010	25	97
MA000070	Cemetery Industry Award 2010	25	98
MA000117	Mannequins and Models Award 2010	20	99
MA000051	Port Authorities Award 2010	19	100
MA000053	Stevedoring Industry Award 2010	15	101
MA000044	Wool Storage, Sampling and Testing Award 2010	14	102
MA000055	Cement and Lime Award 2010	13	103
MA000122	Seagoing Industry Award 2010	13	104
MA000062	Hydrocarbons Industry (Upstream) Award 2010	10	105
MA000107	Salt Industry Award 2010	10	106

2013 Calendar Year (includes internal and external searches)			
MA Code	MA Title	Totals	Rank
MA000109	Professional Diving Industry (Recreational) Award 2010	9	107
MA000111	Fire Fighting Industry Award 2010	7	108
MA000086	Maritime Offshore Oil and Gas Award 2010	6	109
MA000108	Professional Diving Industry (Industrial) Award 2010	5	110
MA000110	Corrections And Detention (Private Sector) Award 2010	4	111
		Total: 1,188,966	