

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

Publication date	Reason for amendments	Clauses affected
18 July 2017	Incorporate changes resulting from <a href="#">PR580863</a>	Schedule F
	Incorporate changes resulting from <a href="#">PR583031</a>	14, Schedule H, Schedule I
	Incorporate changes resulting from <a href="#">PR584119</a>	12, Schedule J
	Incorporate changes resulting from <a href="#">[2017] FWCFB 3500</a> , <a href="#">PR592126</a> and <a href="#">PR592689</a>	9, 10, Schedule A, Schedule B, Schedule C, Schedule E
	Incorporate changes resulting from <a href="#">[2017] FWCFB 3541</a>	6
	Incorporate changes resulting from <a href="#">[2017] FWCFB 3433</a>	1, 3, 6, 7, 8, 10, 14, 22, 23, Schedule G
18 December 2015	<a href="#">Exposure Draft</a>	

Red text indicates changes made to the draft since the previous published version, or issues that remain unresolved. Underlined text indicates new text that is to be included. Strikethrough text indicates existing text that is to be deleted.

## EXPOSURE DRAFT

### Market and Social Research Award 2015

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

The review of this award in accordance with s.156 of the *Fair Work Act 2009* is being dealt with in matter [AM2014/236](#). Additionally a number of common issues are being dealt with by the Commission which may affect this award. Transitional provisions have not been included in this exposure draft pending the outcome of the review.

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

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

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DRAFT

## Part 1—Application and Operation

### 1. Title and commencement

1.1 This award is the *Market and Social Research Award 2015*.

Clause 1.2 amended in accordance with [\[2017\] FWCFB 3433](#) at [328].

~~1.2 This modern award, as varied, commenced operation on 1 January 2010. This modern award commenced operation on 1 January 2010. The terms of the award have been varied since that date.~~

1.3 A variation to this award does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the award as it existed prior to that variation.

1.4 Schedule G—Definitions sets out definitions that apply in this award.

1.5 Neither the making of this award nor the operation of any transitional arrangements is intended to result in a reduction in the take-home pay of employees covered by the award. On application by or on behalf of an employee who suffers a reduction in take-home pay as a result of the making of this award or the operation of any transitional arrangements, the Fair Work Commission may make any order it considers appropriate to remedy the situation.

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

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

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

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

### 3. Coverage

3.1 This industry award covers employers throughout Australia who are engaged in the market and social research industry in respect of work by their employees in the classifications listed in clause 9—Minimum wages to the exclusion of any other modern award.

Definition of **Market and social research industry** retained in coverage clause in accordance with [\[2017\] FWCFB 3433](#) at [339].

3.2 **Market and social research industry** means all market and social research including every process, trade, business or occupation on or in relation to or in

connection with market and social research and all support work engaged in or in connection with market or social research, for both public and private purposes.

Market and social research includes both qualitative and quantitative research, including the gathering, recording or analysing of information or data related to governments, markets, business consultancy, consumers or competitors, or any processes or activities incidental or ancillary to such work.

**3.3** This industry award does not cover:

- (a) an employer covered by the *Higher Education Industry—Academic Staff—Award 2015*;
- (b) an employee excluded from award coverage by the Act;
- (c) employees who are covered by a modern enterprise award, or an enterprise instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees; or
- (d) employees who are covered by a State reference public sector modern award, or a State reference public sector transitional award (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees.

**3.4** This award covers any employer which supplies labour on an on-hire basis in the industry set out in clauses 3.1 and 3.2 in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in that industry. This subclause operates subject to the exclusions from coverage in this award.

**3.5** This award covers employers which provide group training services for trainees engaged in the industry and/or parts of industry set out at clauses 3.1 and 3.2 those trainees engaged by a group training service hosted by a company to perform work at a location where the activities described herein are being performed. This subclause operates subject to the exclusions from coverage in this award.

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

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

## **4. Award flexibility**

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

- (a) arrangements for when work is performed;

- (b) overtime rates;
- (c) penalty rates;
- (d) allowances; and
- (e) leave loading.

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

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

- (a) be confined to a variation in the application of one or more of the terms listed in clause 4.1; and
- (b) result in the employee being better off overall at the time the agreement is made than the employee would have been if no individual flexibility agreement had been agreed to.

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

- (a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;
- (b) state each term of this award that the employer and the individual employee have agreed to vary;
- (c) detail how the application of each term has been varied by agreement between the employer and the individual employee;
- (d) detail how the agreement results in the individual employee being better off overall in relation to the individual employee's terms and conditions of employment; and
- (e) state the date the agreement commences to operate.

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

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

**4.7** An employer seeking to enter into an agreement must provide a written proposal to the employee. Where the employee's understanding of written English is limited the employer must take measures, including translation into an appropriate language, to ensure the employee understands the proposal.

**4.8** The agreement may be terminated:

- (a) by the employer or the individual employee giving 13 weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or
- (b) at any time, by written agreement between the employer and the individual employee.

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

- 4.9 The notice provisions in clause 4.8(a) only apply to an agreement entered into from the first full pay period commencing on or after 4 December 2013. An agreement entered into before that date may be terminated in accordance with clause 4.8(a), subject to four weeks' notice of termination.
- 4.10 The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between an employer and an individual employee contained in any other term of this award.

## 5. Facilitative provisions

- 5.1 A facilitative provision provides that the standard approach in an award provision may be departed from by agreement between an employer and an individual employee, or an employer and the majority of employees in the enterprise or part of the enterprise concerned.
- 5.2 Facilitative provisions in this award are contained in the following clauses:

Clause	Provision	Agreement between an employer and:
8.2(b)	Ordinary hours—spread of hours	
8.3(d)	Ordinary hours—minimum engagement	An individual
8.8	Make-up time	An individual
9.6(a) & (b)	Payment of wages	An individual
12.2	Time off instead of payment for overtime	An individual
13.2	Time off instead of payment of penalty rates	An individual
14.3	Annual leave in advance	An individual

## Part 2—Types of Employment and Classifications

### 6. Types of employment

- 6.1 Employees under this award will be employed in one of the following categories:
  - (a) full-time;
  - (b) part-time; or
  - (c) casual.
- 6.2 An employee not specifically engaged on a part-time or casual basis is a full-time employee for the purposes of this award.

### 6.3 Full-time employees

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

### 6.4 Part-time employees

A part-time employee:

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

### 6.5 Casual employment

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

A Full Bench found a model casual conversion clause should be inserted into modern awards without existing conversion clauses. Any further written submissions, including whether a conversion clause requires adaptation to meet the circumstances of particular awards, are to be filed by 2 August 2017. See [\[2017\] FWCFB 3541](#) at [381]-[382].

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

A Full Bench expressed the provisional view that there was to be a 2 hour minimum engagement for casual employees in awards that do not contain daily minimum engagement. Any further written submissions concerning this view are to be filed on or by 2 August 2017. See [\[2017\] FWCFB 3541](#) at [408].

- (a) A casual employee is an employee who is engaged and paid as a casual employee.
- (b) A casual employee's ordinary hours of work are usually irregular and less than an average of 38 hours per week or the hours required to be worked by the employer.
- (c) **Casual loading**
  - (i) For each ordinary hour worked, a casual employee must be paid:
    - the minimum hourly rate; and
    - a loading of **25%** of the minimum hourly rate, for the classification in which they are employed.

Wording amended as per [\[2017\] FWCFB 3433](#) at para [95].

- (ii) The casual loading is paid instead of annual leave, personal/carer's leave, notice of termination, redundancy benefits and the other **entitlements attributes** of full-time or part-time employment.

## 7. Classifications

7.1 A description of the classifications under this award is set out in Schedule A—Classification Definitions.



Error corrected as per [\[2017\] FWCFB 3433](#) at para [96].

- 7.2 All employees covered by this award must be classified according to the structure set out in ~~Schedule B~~-Schedule A. Employers must advise their employees in writing of their classification and of any changes to their classification.
- 7.3 The classification by the employer must be according to the skill level or levels required to be exercised by the employee in order to carry out the principal functions of the employment as determined by the employer.

### Part 3—Hours of Work

#### 8. Ordinary hours of work and rostering

- 8.1 The ordinary hours of work for a full-time employee are an average of 38 hours per week.
- 8.2 Ordinary hours for full-time and part-time employees may be worked:
- (a) on any day Monday to Sunday over a work cycle; and
  - (b) during the daily spread of ordinary hours, 8.00 am to 8.00 pm, or as varied in respect of the whole or a section of an employer's operations by agreement in writing between the employer and the employees.
- 8.3 The ordinary hours of work for full-time and part-time employees will be determined in advance of a work cycle after consultation between the employer and employees affected in the whole of a section of the operations of their company, provided that:
- (a) the work cycle may extend over 7, 14, 21 or 28 consecutive days;
  - (b) the roster as it affects an individual employee may be varied at any time by agreement between the employee and their employer;
  - (c) there will not be more than 12 ordinary hours of work on any day; and
  - (d) except by agreement between an individual employee and their employer, a full-time and part-time employee rostered to work ordinary hours on any day will be paid for at least three hours' work on that day.
- 8.4 In the absence of agreement at the workplace level in respect of the implementation of the 38 hour week which best suits the business and the preferences of the employees concerned, the parties will apply the provisions of clause 22—Dispute resolution.

Error corrected as per [\[2017\] FWCFB 3433](#) at para [97].

- 8.5 Casual employees may work on any day of the week for the casual hourly rate of pay set out in ~~clause 9~~-clause 6.5(c)—Minimum wages, except that no casual employee will be required against their wishes to work between the hours of midnight and 8.00 am or more than eight hours in any day.

- 8.6** If an employee is required to commence work at a location away from the employee’s usual work location, working time will include travel time between the employee’s home and the work location and return, less one hour.
- 8.7** For the purposes of calculating leave entitlements of full-time employees, a day will be regarded as 7.6 hours and an ordinary working week will be regarded as 38 hours. Pro rata entitlements will apply for part-time employees.
- 8.8 Make-up time**
- (a) An employee may elect, with the consent of their employer, to work make-up time, under which the employee takes time off ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the award.
- (b) On each occasion that the employee elects to use this provision the resulting agreement will be recorded in the time and wages records, personnel file or forms appropriate to the enterprise, at the time when the agreement is made.

## Part 4—Wages and Allowances

### 9. Minimum wages

Rates updated as a result of AWR 2017

- 9.1** An employer must pay an employee the following minimum wages for ordinary hours worked by the employee:

<b>Employee classification</b>	<b>Minimum weekly rate</b>	<b>Minimum annual salary</b>	<b>Minimum hourly rate</b>
	\$	\$	\$
Market research trainee	728.00	37,856	19.16
Support employee first year	791.70	41,168	20.83
Support employee thereafter	814.20	42,338	21.43
Market research interviewer	814.20	42,338	21.43
Executive (face-to-face) interviewer and door-to-door interviewer	822.20	42,754	21.64
Editor/Coder/Keyboard operator	828.10	43,061	21.79
Team leader	867.00	45,084	22.82
Field supervisor	931.20	48,422	24.51
Research assistant	931.20	48,422	24.51
Field manager	1,017.10	52,889	26.77

<b>Employee classification</b>	<b>Minimum weekly rate</b>	<b>Minimum annual salary</b>	<b>Minimum hourly rate</b>
	\$	\$	\$
Research officer	1,017.10	52,889	26.77
Research manager	1338.70	69,612	35.23

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

**9.2** For the purposes of this clause, any entitlement to a minimum wage expressed to be by the week means any entitlement which an employee would receive for performing 38 hours of work.

**9.3** The minimum annual salary is calculated by multiplying the minimum weekly rate by 52.

**9.4 Payment on a total wage basis**

An employer may pay a full-time or part-time employee on a total wage basis instead of the wages and penalty payments set out in this clause, clauses 10—Allowances, 12—Overtime, 13—Penalty rates and 14.2—Annual leave loading, provided that the total wage is not less than the total minimum wages set out in clause 9.1, plus **25%**.

**9.5 Payment on a commission basis**

(a) An employer may pay a full-time, part-time or casual employee on a total commission basis (such as a fee per placement) instead of the wages and penalty payments set out in clause 9.5, clauses 10—Allowances, 8—Ordinary hours of work, 12—Overtime and 13—Penalty rates provided that such commission payments:

- (i) are reasonably expected to result in total payments to employees which are not less than the total wages and penalty payments otherwise payable for such work; and
- (ii) have been agreed to by the employee in advance of the period of employment for the project(s).

(b) Unless agreed otherwise between the employer and the employee, the employer will provide the employee with a form, including the following assurances by the employer:

- (i) the details of the amount and terms of payments offered;
- (ii) an assurance that the employer has previously conducted or trialled the same or a very similar project under very similar circumstances and times using similarly briefed and capable employees being paid wages and penalties for time worked;
- (iii) an assurance that such prior actual experience is sufficient to objectively establish that the total commission payments in most cases will provide an average competent employee with payments not less than would be

the case from payment of wages and penalties for time worked, plus a contingency margin of 10%; and

- (iv) the form will be signed by the employee accepting the payment on the total commission basis offered and returned in advance of the period of employment for the project(s).

## 9.6 Payment of wages

- (a) Wages will be paid fortnightly. However, where the employer and the employee agree, wages may be paid weekly, four-weekly or monthly.
- (b) Wages must be paid by electronic funds transfer. However, where the employer and the employee agree, wages may be paid by cash or by cheque.

Payment within a specific period after pay cycle is being considered in matter [AM2016/6](#)

- (c) Payment must be made within 14 days of the employer being notified of the hours which have been worked in a pay period.
- (d) When payment is made the employer must provide to each employee in writing:
  - (i) a detailed statement of the nature and amount of the gross wage to which the employee is entitled;
  - (ii) the nature and amounts of any deductions made;
  - (iii) the precise nature of the deductions; and
  - (iv) the net amount being paid to the employee.
- (e) An employer must keep time and wages records showing the:
  - (i) name of each employee;
  - (ii) rate of wages and commissions;
  - (iii) hours worked;
  - (iv) allowances paid in accordance with this award; and
  - (v) details of any deductions.

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

Payment of wages on termination is being considered in matter [AM2016/8](#), see [draft determination \(at attachment A of Statement\)](#)

- (f) An employer must, on request, provide to an employee on termination a detailed statement of outstanding entitlements. The wages due to an employee must be paid on the day of termination or forwarded via post on the next working day.

**9.7 Absence from work**

Employees who are not on approved leave and who do not attend for duty will not be paid for the actual time of the non-attendance.

**9.8 School-based apprentices**

For school-based apprentices, see Schedule D—School-based Apprentices.

Parties are asked whether a school-based apprentices schedule is required as the award does not provide for the employment of apprentices.

**9.9 Supported wage system**

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

**10. Allowances**

Rates updated as a result of AWR2017

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

**10.2 Motor vehicle allowance**

An employee who is required by their employer to use their own motor vehicle in the performance of their duties will be paid an allowance of not less than **\$0.78** per kilometre subject to the following:

- (a) the travel will be restricted to on-the-job motor vehicle usage; and
- (b) where an employee is required to commence work at a location away from the employee's usual work location, the distance for motor vehicle allowance purposes will be the total distance travelled from the employee's home and return, including on-the-job motor vehicle usage. A deduction of 22 kilometres will be made from the distance travelled in respect of employees who are paid for at least three hours in that day.

**10.3 Damage to or theft of personal effects**

If, whilst on the employer's business, an employee suffers either damage to or theft of clothing or personal effects, the employer will reimburse the employee to a maximum of **\$501.20** for a single claim less any amount of reimbursement from other sources. Payment will not be made if the damage or theft is in any way caused by the employee's own wilful act or neglect.

**10.4 Expenses reimbursement**

- (a) In addition to the remuneration payable under clause 9—Minimum wages, an employer will reimburse an employee for all expenses which have been actually and properly incurred by the employee as required by the employer in the discharge of the employee's duties.

Wording amended as per [\[2017\] FWCFB 3433](#) at para [98].

- (b) ~~Such~~ Expenses that can reasonably be anticipated will be payable in advance.

## 10.5 Relocation allowance

- (a) Where an employee is directed or required by the employer, in writing, to relocate residence to another area, the employer will reimburse the employee reasonable costs for relocating personal and household effects and members of the employee's immediate dependent family.
- (b) Reasonable costs expressed in this clause are to be the amount agreed upon, in writing, between the employer and the employee prior to relocation.

## 10.6 Telephone allowance

Where an employee is required by the employer, in writing, to have a private telephone as part of the employee's work duties, the employer will reimburse the employee:

- (a) the cost of rental and all telephone calls made as part of the employee's work duties; and
- (b) the cost of the installation if the employer has required in writing that the employee install a private telephone for use in connection with the employer's business.

# 11. Superannuation

## 11.1 Superannuation legislation

- (a) Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth), deals with the superannuation rights and obligations of employers and employees. Under superannuation legislation individual employees generally have the opportunity to choose their own superannuation fund. If an employee does not choose a superannuation fund, any superannuation fund nominated in the award covering the employee applies.
- (b) The rights and obligations in these clauses supplement those in superannuation legislation.

## 11.2 Employer contributions

An employer must make such superannuation contributions to a superannuation fund for the benefit of an employee as will avoid the employer being required to pay the superannuation guarantee charge under superannuation legislation with respect to that employee.

## 11.3 Voluntary employee contributions

- (a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 11.2.

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

#### 11.4 Superannuation fund

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

- (a) LUCRF;
- (b) any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund is an eligible choice fund and is a fund that offers a MySuper product or is an exempt public sector superannuation scheme; or
- (c) a superannuation fund or scheme which the employee is a defined benefit member of.

#### 11.5 Absence from work

Subject to the governing rules of the relevant superannuation fund, the employer must also make the superannuation contributions provided for in clause 11.2 and pay the amount authorised under clauses 11.3(a) or (b):

- (a) **Paid leave**—while the employee is on any paid leave;
- (b) **Work-related injury or illness**—for the period of absence from work (subject to a maximum of 52 weeks) of the employee due to work-related injury or work-related illness provided that:
  - (i) the employee is receiving workers compensation payments or is receiving regular payments directly from the employer in accordance with the statutory requirements; and
  - (ii) the employee remains employed by the employer.

## Part 5—Penalties and Overtime

### 12. Overtime

12 amended in accordance with [PR584119](#) (12.2 substituted)

**12.1 Overtime payments—employees other than casuals**

- (a) For a full-time or part-time employee, overtime is all time worked in excess of the employee's rostered ordinary hours of work.
- (b) Overtime must be paid at **125%** of the minimum hourly rate for each hour of overtime worked.

**12.2 Time off instead of payment for overtime**

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

Note: An example of the type of agreement required by this clause is set out at Schedule J. There is no requirement to use the form of agreement set out at Schedule J. An agreement under clause 12.2 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

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

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

- (e) Time off must be taken:
  - (i) within the period of 6 months after the overtime is worked; and
  - (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (f) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 12.2 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in paragraph (e), the employer must pay the employee for



the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.

- (h) The employer must keep a copy of any agreement under clause 12.2 as an employee record.
- (i) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (j) An employee may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 12.2 will apply, including the requirement for separate written agreements under paragraph (b) for overtime that has been worked.

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

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

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

### 13. Penalty rates

#### 13.1 Out-of-hours penalty

Rates updated as a result of AWR2017

In addition to the ordinary rates of pay set out in clause 9—Minimum wages, full-time and part-time employees will be paid an out-of-hours penalty for each ordinary hour of work as follows:

- (a) Saturday—**\$5.36** per hour;
- (b) Sunday or public holiday—**\$10.72** per hour;
- (c) Monday to Friday outside the daily spread of ordinary hours contained in clause 8.2(b)—**\$5.36** per hour.

The parties are asked to clarify whether these 'penalty' rates apply cumulatively with overtime rates or in substitution of them? Should this award include a clause to the effect that where two rates apply (e.g. a penalty and overtime) the higher of the two rates apply?

- 13.2 Where agreement is reached between the employer and the full-time or part-time employee, the employer may grant time off instead of the payments prescribed in this clause.

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

### 14. Annual leave

14 amended in accordance with [PR583031](#) (14.3 renamed and substituted; 14.4 - 14.7 inserted)

**14.1** Annual leave is provided for in the NES. Annual leave does not apply to casual employees.

#### 14.2 Annual leave loading

In addition to the entitlements in the NES, employees are entitled to a loading of **17.5%** of the appropriate rates prescribed in clause 9—Minimum wages, for each of the four weeks up to a maximum total payment equivalent to one week of average weekly earnings.

Parties are asked to clarify the method of determining the “average weekly earnings”. Is this the ABS average weekly earnings?

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

#### 14.3 Annual leave in advance

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

Note: An example of the type of agreement required by clause 14.3 is set out at Schedule H. There is no requirement to use the form of agreement set out at Schedule H.

- (c) The employer must keep a copy of any agreement under clause 14.3 as an employee record.
- (d) If, on the termination of the employee’s employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under clause 14.3, the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

#### 14.4 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 14.4.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 14.4.
- (c) An employer and an employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee.
- (d) An agreement under clause 14.4 must state:
  - (i) the amount of leave to be cashed out and the payment to be made to the employee for it; and
  - (ii) the date on which the payment is to be made.
- (e) An agreement under clause 14.4 must be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
- (f) The payment must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made.
- (g) An agreement must not result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.
- (h) The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.
- (i) The employer must keep a copy of any agreement under clause 14.4 as an employee record.

References to Fair Work Act changed to 'Act'. See [\[2017\] FWCFB 3433](#) at [350].

Note 1: Under section 344 of the ~~Act Fair Work Act~~, an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 14.4.

Note 2: Under section 345(1) of the ~~Act Fair Work Act~~, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 14.4.

Note 3: An example of the type of agreement required by clause 14.4 is set out at Schedule I. There is no requirement to use the form of agreement set out at Schedule I.

#### 14.5 Excessive leave accruals: general provision

Note: Clauses 14.5 to 14.7 contain provisions, additional to the National Employment Standards, about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the ~~Act Fair Work Act~~.

- (a) An employee has an **excessive leave accrual** if the employee has accrued more than 8 weeks' paid annual leave.

- (b) If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (c) Clause 14.6 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 14.7 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

**14.6 Excessive leave accruals: direction by employer that leave be taken**

- (a) If an employer has genuinely tried to reach agreement with an employee under clause 14.5(a) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.
- (b) However, a direction by the employer under paragraph (a):
  - (i) is of no effect if it would result at any time in the employee’s remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements (whether made under clause 14.5, 14.6 or 14.7 or otherwise agreed by the employer and employee) are taken into account; and
  - (ii) must not require the employee to take any period of paid annual leave of less than one week; and
  - (iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
  - (iv) must not be inconsistent with any leave arrangement agreed by the employer and employee.
- (c) The employee must take paid annual leave in accordance with a direction under paragraph (a) that is in effect.
- (d) An employee to whom a direction has been given under paragraph (a) may request to take a period of paid annual leave as if the direction had not been given.

Note 1: Paid annual leave arising from a request mentioned in paragraph (d) may result in the direction ceasing to have effect. See clause 14.6(b)(i).

References to Fair Work Act changed to ‘Act’. See [\[2017\] FWCFB 3433](#) at [350].

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

**14.7 Excessive leave accruals: request by employee for leave**

- (a) Clause 14.7 comes into operation from 29 July 2017.
- (b) If an employee has genuinely tried to reach agreement with an employer under clause 14.5(a) but agreement is not reached (including because the employer

refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.

- (c) However, an employee may only give a notice to the employer under paragraph (b) if:
  - (i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and
  - (ii) the employee has not been given a direction under clause 14.6(a) that, when any other paid annual leave arrangements (whether made under clause 14.5, 14.6 or 14.7 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.
- (d) A notice given by an employee under paragraph (b) must not:
  - (i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 14.5, 14.6 or 14.7 or otherwise agreed by the employer and employee) are taken into account; or
  - (ii) provide for the employee to take any period of paid annual leave of less than one week; or
  - (iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or
  - (iv) be inconsistent with any leave arrangement agreed by the employer and employee.
- (e) An employee is not entitled to request by a notice under paragraph (b) more than 4 weeks' paid annual leave in any period of 12 months.
- (f) The employer must grant paid annual leave requested by a notice under paragraph (b).

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

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

## **16. Parental leave and related entitlements**

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

## **17. Public holidays**

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

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

- (a) Where an employee works on a public holiday they will be paid in accordance with clauses 12—Overtime or 13—Penalty rates.

## **17.2 Part-day public holiday**

17.2 inserted on 21 September 2016

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

## **18. Community service leave**

Community service leave is provided for in the NES.

## **19. Termination of employment**

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

### **19.2 Notice of termination by an employee**

The notice of termination required to be given by an employee is the same as that required of an employer except that there is no requirement on the employee to give additional notice based on the age of the employee concerned. If an employee fails to give the required notice the employer may withhold from any monies due to the employee on termination under this award or the NES, an amount not exceeding the amount the employee would have been paid under this award in respect of the period of notice required by this clause less any period of notice actually given by the employee.

### **19.3 Job search entitlement**

Where an employer has given notice of termination to an employee, an employee must be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off is to be taken at times that are convenient to the employee after consultation with the employer.

## **20. Redundancy**

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

### **20.2 Transfer to lower paid duties**

Where an employee is transferred to lower paid duties by reason of redundancy, the same period of notice must be given as the employee would have been entitled to if the employment had been terminated and the employer may, at the employer's option, make payment instead of an amount equal to the difference between the former ordinary time rate of pay and the ordinary time rate of pay for the number of weeks of notice still owing.

### **20.3 Employee leaving during notice period**

An employee given notice of termination in circumstances of redundancy may terminate their employment during the period of notice. The employee is entitled to receive the benefits and payments they would have received under this clause had they remained in employment until the expiry of the notice, but is not entitled to payment instead of notice.

## 20.4 Job search entitlement

- (a) An employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose a statutory declaration is sufficient.
- (c) This entitlement applies instead of clause 19.3.

## Part 7—Consultation and Dispute Resolution

### 21. Consultation

#### 21.1 Consultation regarding major workplace change

- (a) **Employers to notify**
  - (i) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must notify the employees who may be affected by the proposed changes and their representatives, if any.
  - (ii) **Significant effects** include termination of employment; major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations; and the restructuring of jobs. Provided that where this award makes provision for alteration of any of these matters an alteration is deemed not to have significant effect.
- (b) **Employers to discuss change**
  - (i) The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 21.1(a), the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.
  - (ii) The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 21.1(a).
  - (iii) For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives, if any, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and

any other matters likely to affect employees provided that no employer is required to disclose confidential information the disclosure of which would be contrary to the employer's interests.

## **21.2 Consultation about changes to rosters or hours of work**

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

## **22. Dispute resolution**

- 22.1** In the event of a dispute about a matter under this award, or a dispute in relation to the NES, in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.
- 22.2** If a dispute about a matter arising under this award or a dispute in relation to the NES is unable to be resolved at the workplace, and all appropriate steps under clause 22.1 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.
- 22.3** The parties may agree on the process to be utilised by the Fair Work Commission including mediation, conciliation and consent arbitration.
- 22.4** Where the matter in dispute remains unresolved, the Fair Work Commission may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute.



- 22.5 An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.

Parties are to consider the proposed variations regarding 'occupational health and safety' and provide any comments by Friday 28 July 2017. See [\[2017\] FWCFB 3433](#) at [382].

- 22.6 While the dispute resolution procedure is being conducted, work must continue in accordance with this award and the Act. Subject to applicable ~~occupational health and safety~~ ~~work health and safety~~ legislation, an employee must not unreasonably fail to comply with a direction by the employer to perform work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

### 23. Dispute resolution procedure training leave

'Workplace Relations Act 1996 (Cth)' updated to *Fair Work Act 2009 (Cth)* as per [\[2017\] FWCFB 3433](#) at para [101].

References to Fair Work Act changed to 'Act'. See [\[2017\] FWCFB 3433](#) at [350].

- 23.1 Subject to clause 23.2, an eligible employee representative will be entitled to, and the employer will grant, up to five days' training leave with pay to attend courses which are directed at the enhancement of the operation of the dispute resolution procedure including its operation in connection with this award and with the ~~Workplace Relations Act 1996 (Cth)~~, ~~Act Fair Work Act 2009 (Cth)~~ or with any relevant agreement which provides it is to be read in conjunction with this award.

- 23.2 The employer will not be required in any calendar year to provide dispute resolution training leave across the whole workforce of that employer in excess of:

- (a) a total of 20 days' leave;
- (b) leave for the lesser of five employees nationally or three employees in any one state or territory.

- 23.3 The granting of leave, pursuant to this clause, will be subject to:

- (a) the employee or an eligible employee representative giving not less than 25 working days' written notice of the intention to attend such course, or such lesser period of notice as may be agreed by the employer. Such written notice must include the nature, content and duration of the course to be attended; and
- (b) the employer being able to make adequate staffing arrangements amongst current employees during the period of such leave. An employer will not use this subclause to avoid an obligation under this clause.

- 23.4 Leave of absence granted pursuant to this clause will count as service for all purposes of this award.

Parties are asked to clarify whether the term 'shift loading' should be replaced with 'shift penalty' in clause 23.5 given the Full Bench comments at [363] to [379] of [\[2017\] FWCFB 3433](#).

- 23.5 Each employee on leave approved in accordance with this clause will be paid all ordinary time earnings. For the purpose of this subclause ordinary time earnings for

an employee means the classification rate, overaward payment, superannuation and **shift loading** which otherwise would have been payable.

- 23.6** All expenses (such as travel, accommodation and meals) associated with or incurred by the employee attending a training course as provided for in this clause will be the responsibility of the employee or, where relevant, the union.
- 23.7** An employee may be required to satisfy the employer of attendance at the course to qualify for payment of leave, unless the employee would otherwise have been entitled to payment under clause 15—Personal/carer’s leave and compassionate leave.
- 23.8** In the event a scheduled rostered day off falls within a period of leave approved pursuant to this clause, no alternative day of leave will be substituted instead.
- 23.9** Employees will be allowed up to two hours of paid time per year to attend union meetings at the employer’s premises which are designed to facilitate awareness and understanding of the dispute resolution procedure in this award.

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## Schedule A—Classification Definitions

Rate in A.1 updated as a result of AWR 2017

### A.1 Market research trainee

Includes a Market research interviewer, Editor, Coder, Keyboard operator and/or other support employee who is allocated to less complex tasks and who usually requires extensive assistance and supervision during their first six work sessions.

An employee may be classified as a trainee until they have earned a maximum of \$4603 or completed 300 hours (whichever is greater) provided that this will include all work for the employer during the previous three years and provided that once an employee has completed this training with one employer they will not then be employed at less than the rate of pay for the classification of interviewer unless the employee has left the industry for three years.

A trainee will undergo at least eight hours' training at the employer's expense.

Parties are asked to clarify whether the reference to "whichever is greater" should refer to "whichever occurs first" when classifying an employee as a trainee.

### A.2 Support employee

Includes employees engaged principally on other market research support activities, including group recruitment. The employee will qualify for the full rate after they have completed the requirements of a Market research trainee.

### A.3 Market research interviewer

Undertakes interviews with all types of respondents by telephone or face-to-face, prepares and submits all fieldwork associated documentation and attends briefing and de-briefing meetings where required. The interviewer may, where required from time to time, assist in the preparation of materials prior to or during a survey. Interviewers will qualify for the full Market research interviewer rate of pay when they have completed the requirements of a Market research trainee.

### A.4 Executive (face-to-face) interviewer

Refers to a Market research interviewer who is conducting direct face-to-face interviews targeted to executive and professional interviewees covering matters relating to the special expertise of the interviewees.

### A.5 Door-to-door interviewer

Refers to a Market research interviewer who is conducting multiple direct face-to-face interviews by calling on interviewees at the interviewee's own premises, but does not include interviewing at central locations such as shopping centres.

### A.6 Editor, Coder and Keyboard operator

Includes employees engaged on examining market research fieldwork interviews or questionnaire results so as to ensure consistency, accuracy and validity, classifying interview and questionnaire results so as to be suitable for keyboard entry and for subsequent analysis as required by clients, and entering and manipulating the presentation of data on a computer or similar machine (including as required

interacting with the computer, limited programming and data manipulation to ensure that file maintenance and integrity are achieved and results are presented as required for the client report).

#### **A.7 Team leader**

Includes interviewers who undertake interviews with all types of respondents by telephone or face-to-face and perform a role of providing experienced guidance, assistance and leadership by example to interviewers (including some supervision and limited practical field training).

A Team leader may also be an employee providing similar leadership role in relation to a team of other market research employees, including Auditors, Editors, Coders and/or Keyboard operators. The Team leader may also be required to liaise between Interviewers and Field managers (including checking and counting the number of interviews obtained, communicating the researcher's instructions to the interviewer team and from time to time where required assisting and coordinating the activities of a small group of less experienced interviewers).

A Team leader will be responsible for no more than eight employees.

#### **A.8 Field supervisor**

Co-ordinates and supervises the fieldwork activities of Team leaders and Market research interviewers engaged on specific market research projects, including being responsible for the quality of the output, the training and the productivity of the field team. An employee providing a similar supervisory role in relation to other employees, including Editors, Coders and/or Keyboard operators, will be paid at the Field supervisor rate.

An employee whilst in charge of a telephone room will be employed in a classification not less than Field supervisor.

#### **A.9 Research assistant**

Assists with the duties of a Research officer.

#### **A.10 Field manager**

Schedules fieldwork and coordinates the activities of supervisors and interviewers and is responsible for the hiring and training of all field personnel, maintenance of company procedures and fieldwork standards. The Field manager will generally be involved in coordinating a range of fieldwork projects and allocating fieldwork across an organisation.

#### **A.11 Research officer**

May be engaged in the duties of:

- writing questionnaires;
- briefing field teams;
- moderating group discussions;
- conducting in-depth interviews;

- preparing computer specifications;
- analysing data and preparing written reports;
- writing proposals; and
- liaising with, and presenting data to, clients.

#### **A.12 Research manager**

Initiates, plans and directs projects, and has responsibilities for generating business and/or managing an organisation.

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## Schedule B—Summary of Hourly Rates of Pay

Rates updated as a result of AWR 2017

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

### B.1 Full-time and part-time employees

#### B.1.1 Full-time and part-time employees—ordinary and penalty rates

	Ordinary hours	Monday-Friday outside daily spread of hours	Saturday	Sunday	Public holiday
	<b>% of minimum hourly rate</b>				
	<b>100%</b>	<b>100% + \$5.36</b>	<b>100% + \$5.36</b>	<b>100% + \$10.72</b>	<b>100% + \$10.72</b>
	\$	\$	\$	\$	\$
Market research trainee	19.16	24.52	24.52	29.88	29.88
Support employee first year	20.83	26.19	26.19	31.55	31.55
Support employee thereafter	21.43	26.79	26.79	32.15	32.15
Market research interviewer	21.43	26.79	26.79	32.15	32.15
Executive (face-to-face) interviewer and door-to-door interviewer	21.64	27.00	27.00	32.36	32.36
Editor/Coder/Keyboard operator	21.79	27.15	27.15	32.51	32.51
Team leader	22.82	28.18	28.18	33.54	33.54
Field supervisor	24.51	29.87	29.87	35.23	35.23
Research assistant	24.51	29.87	29.87	35.23	35.23
Field manager	26.77	32.13	32.13	37.49	37.49
Research officer	26.77	32.13	32.13	37.49	37.49
Research manager	35.23	40.59	40.59	45.95	45.95

**B.1.2 Full-time and part-time employees—overtime rates**

	<b>All hours in excess of rostered ordinary hours</b>
	<b>% of minimum hourly rate</b>
	<b>125%</b>
	<b>\$</b>
Market research trainee	23.95
Support employee first year	26.04
Support employee thereafter	26.79
Market research interviewer	26.79
Executive (face-to-face) interviewer and door-to-door interviewer	27.05
Editor/Coder/Keyboard operator	27.24
Team leader	28.53
Field supervisor	30.64
Research assistant	30.64
Field manager	33.46
Research officer	33.46
Research manager	44.04

**B.2 Casual employees**

Parties are asked to clarify whether penalty rates in clause 12.2(a) apply to casual employees.

**B.2.1 Casual employees—ordinary rates.**

	<b>All ordinary hours</b>
	<b>% of minimum hourly rate</b>
	<b>125%</b>
	<b>\$</b>
Market research trainee	23.95
Support employee first year	26.04
Support employee thereafter	26.79
Market research interviewer	26.79
Executive (face-to-face) interviewer and door-to-door interviewer	27.05
Editor/Coder/Keyboard operator	27.24

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	<b>All ordinary hours</b>
	<b>% of minimum hourly rate</b>
	<b>125%</b>
Team leader	28.53
Field supervisor	30.64
Research assistant	30.64
Field manager	33.46
Research officer	33.46
Research manager	44.04

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## Schedule C—Summary of Monetary Allowances

Rates updated as a result of AWR2017

See clause 10 for full details of allowances payable under this award.

### C.1 Expense related allowances

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

Allowance	Clause	\$
Motor vehicle allowance	10.2	0.78 per km
Damage to or theft of personal effects—maximum	10.3	Up to 501.20 per single claim

#### C.1.1 Adjustment of expense related allowances

At the time of any adjustment to the [standard rate](#), each expense related allowance will be increased by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.

The applicable index figure is the index figure published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index (Cat No. 6401.0), as follows:

Allowance	Applicable Consumer Price Index figure
Damage to or theft of personal effects	Clothing and footwear group
Motor vehicle allowance	Private motoring sub-group

### C.2 Wage related penalties

The wage related penalties in clause 13—Penalty rates of this award are based on the standard rate as defined in Schedule G as the minimum hourly rate for a Market research interviewer in clause 9—Minimum wages = **\$21.43**

Penalty	Clause	% of standard rate \$21.43	\$ per hour
Saturday	13.1(a)	25	5.36
Sunday or public holiday	13.1(b)	50	10.72
Monday to Friday outside daily spread of ordinary hours	13.1(c)	25	5.36

#### C.2.1 Adjustment of wage related penalties

Wage related penalties are adjusted in accordance with increases to wages and are based on a percentage of the standard rate as specified.

## **Schedule D—School-based Apprentices**

- D.1** This schedule applies to school-based apprentices. A school-based apprentice is a person who is undertaking an apprenticeship in accordance with this schedule while also undertaking a course of secondary education.
- D.2** A school-based apprenticeship may be undertaken in the trades covered by this award under a training agreement or contract of training for an apprentice declared or recognised by the relevant State or Territory authority.
- D.3** The relevant minimum wages for full-time junior and adult apprentices provided for in this award, calculated hourly, will apply to school-based apprentices for total hours worked including time deemed to be spent in off-the-job training.
- D.4** For the purposes of clause D.3, where an apprentice is a full-time school student, the time spent in off-the-job training for which the apprentice must be paid is 25% of the actual hours worked each week on-the-job. The wages paid for training time may be averaged over the semester or year.
- D.5** A school-based apprentice must be allowed, over the duration of the apprenticeship, the same amount of time to attend off-the-job training as an equivalent full-time apprentice.
- D.6** For the purposes of this schedule, off-the-job training is structured training delivered by a Registered Training Organisation separate from normal work duties or general supervised practice undertaken on the job.
- D.7** The duration of the apprenticeship must be as specified in the training agreement or contract for each apprentice but must not exceed six years.
- D.8** School-based apprentices progress through the relevant wage scale at the rate of 12 months progression for each two years of employment as an apprentice.
- D.9** The apprentice wage scales are based on a standard full-time apprenticeship of four years (unless the apprenticeship is of three years duration). The rate of progression reflects the average rate of skill acquisition expected from the typical combination of work and training for a school-based apprentice undertaking the applicable apprenticeship.
- D.10** If an apprentice converts from school-based to full-time, all time spent as a full-time apprentice will count for the purposes of progression through the relevant wage scale in addition to the progression achieved as a school-based apprentice.
- D.11** School-based apprentices are entitled pro rata to all of the other conditions in this award.

## Schedule E—Supported Wage System

Schedule E updated in accordance with [PR581528](#)

**E.1** This schedule defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this award.

**E.2** In this schedule:

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

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

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

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

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

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

### **E.3 Eligibility criteria**

**E.3.1** Employees covered by this schedule will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.

**E.3.2** This schedule does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their employment.

### **E.4 Supported wage rates**

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

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

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

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

**E.5 Assessment of capacity**

**E.5.1** For the purpose of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the Supported Wage System by an approved assessor, having consulted the employer and employee and, if the employee so desires, a union which the employee is eligible to join.

**E.5.2** All assessments made under this schedule must be documented in an SWS wage assessment agreement, and retained by the employer as a time and wages record in accordance with the Act.

**E.6 Lodgement of SWS wage assessment agreement**

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

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

**E.7 Review of assessment**

The assessment of the applicable percentage should be subject to annual or more frequent review on the basis of a reasonable request for such a review. The process of review must be in accordance with the procedures for assessing capacity under the supported wage system.

## **E.8 Other terms and conditions of employment**

Where an assessment has been made, the applicable percentage will apply to the relevant minimum wage only. Employees covered by the provisions of this schedule will be entitled to the same terms and conditions of employment as other workers covered by this award on a pro rata basis.

## **E.9 Workplace adjustment**

An employer wishing to employ a person under the provisions of this schedule must take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

## **E.10 Trial period**

- E.10.1** In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this schedule for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- E.10.2** During that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.
- E.10.3** The minimum amount payable to the employee during the trial period must be no less than \$82 per week.
- E.10.4** Work trials should include induction or training as appropriate to the job being trialled.
- E.10.5** Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of assessment under clause E.5.

## Schedule F—2016 Part-day Public Holidays

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

Schedule F amended in accordance with [PR580863](#)

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

**F.1** Where a part-day public holiday is declared or prescribed between 7.00 pm and midnight on Christmas Eve (24 December 2016) or New Year’s Eve (31 December 2016) the following will apply on Christmas Eve and New Year’s Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:

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

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

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

DRAFT

## Schedule G—Definitions

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

In this award, unless the contrary intention appears:

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

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

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

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

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

**market and social research** includes both qualitative and quantitative research, including the gathering, recording or analysing of information or data related to governments, markets, business consultancy, consumers or competitors, or any processes or activities incidental or ancillary to such work

Definition of **market and social research industry** has been changed in accordance with [\[2017\] FWCFB 3433](#) at [339].

**market and social research industry** has the meaning given in clause 3.2

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

References to Fair Work Act changed to 'Act'. See [\[2017\] FWCFB 3433](#) at [350].

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

**on-hire** means the on-hire of an employee by their employer to a client, where such employee works under the general guidance and instruction of the client or a representative of the client

**standard rate** means the minimum hourly rate for a Market research interviewer in clause 9.1



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

Schedule H—Agreement to Take Annual Leave in Advance inserted in accordance with [PR583031](#)

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

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

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

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

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

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

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

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

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

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

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

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

**I agree that:**

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

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

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

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

## Schedule I—Agreement to Cash Out Annual Leave

Schedule I—Agreement to Cash Out Annual Leave inserted in accordance with [PR583031](#)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Schedule J— Agreement for time off instead of payment for overtime inserted in accordance with [PR584119](#)

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

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

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

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

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

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

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

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

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

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

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

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

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