

Exposure Draft—Commercial Sales Award 20XX

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

Publication date	Reason for amendments	Clauses affected
1 March 2019	Incorporates change resulting from PR582988	20.9(a) (deleted)
	Incorporates changes from [2017] FWCFB 3433	1.1
	Incorporate changes resulting from PR598110	Schedule G
	Incorporate changes resulting from [2018] FWCFB 1405	1.2, 4.2(b), 11, 15.2, 17.2(f), 20.3, 20.7, 20.8, 2, 25.3
	Incorporates changes resulting from [2018] FWCFB 1548	7.2
	Incorporates changes resulting from [2018] FWCFB 3500 , PR606408 , PR606561 , PR606630	15, 17, Schedule A, Schedule B, Schedule C
	Incorporates changes resulting from [2018] FWCFB 3936 , PR609405	18 (deleted)
	Incorporate changes resulting from [2018] FWCFB 4695 , PR700650 , PR700555	11.3, 11.4
	Incorporate changes resulting from [2018] FWCFB 4704 , PR610247	5, 26, 27, 28, 29
	Incorporates changes resulting from [2018] FWCFB 4735 , PR610116	16
	Incorporate changes resulting from [2018] FWCFB 6368	0, 17.2, Schedule A
	Incorporate changes resulting from PR701683	Schedule G
	Incorporates changes resulting from [2018] FWCFB 6863 , PR701486	6
Administrative changes by Modern Awards team Exposure Draft	9.5 (deleted), 16	
14 October 2019	Incorporating changes resulting from [2015] FWCFB 4658 at [57]	17
	Incorporating changes resulting from [2019] FWCFB 1333 at [35]	1.5 (deleted)
	Incorporates changes resulting from [2019] FWCFB 2548 , PR706936	30
	Incorporating changes resulting from [2019] FWCFB 3500 , PR707496 , PR707723 , PR709080	15, 17, Schedule A, Schedule B, Schedule C

Exposure Draft—Commercial Sales Award 201XX

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

Publication date	Reason for amendments	Clauses affected
	Incorporating changes resulting from [2019] FWCFB 5144	24
	Incorporating changes resulting from [2019] FWCFB 5145 , PR712261	7.2, 25.2, Schedule G
	Incorporating changes resulting from [2019] FWCFB 5409	15
	Incorporating changes resulting from [2019] FWCFB 6899 and [2019] FWCFB 6935	2, 4.2, 15.2, Schedule A
	Administrative changes made by Modern Awards team to the document structure, Part and clause titles, and clause content in accordance with [2019] FWCFB 5409 at [6] and Attachment A	Part 1—, 1.4 (deleted), 2, 9, 10, 11, 11.4, 15, 16.3, 17, Part 5—, 19, Part 6—, 20, 23, Part 8—, 29, 30, B.1.1, Schedule D—National Training Wage (deleted), Schedule F—Definitions (deleted), Schedule D, Schedule G
	Administrative changes made by Modern Awards team to incorporate previous A clauses into the numbering of the exposure draft	6, 16, 27
	Administrative change by Modern Awards team	11.2(a)

EXPOSURE DRAFT

Commercial Sales Award 20XX

This exposure draft has been prepared by staff of the Fair Work Commission based on the **Commercial Sales Award 2010** as at 18 December 2015 and incorporates award updates up to 20 September 2019. This exposure draft does not seek to amend any entitlements under the Commercial Sales Award 2010. Instead, it has been prepared to address some of the structural issues identified in modern awards and to apply plain language drafting principles and techniques.

The review of this award in accordance with section 156 of the *Fair Work Act 2009* is being dealt with in matter [AM2014/221](#). Additionally a number of common issues are being dealt with by the Commission which may affect this award. Some transitional provisions have been deleted as a result of decisions made during the review.

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

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DRAFT

Part 1—Application and Operation of this Award

1. Title and commencement

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

- 1.1 This award is the *Commercial Sales Award 20XX*.
- 1.2 This modern award commenced operation on 1 January 2010. The terms of the award have been varied since that date.
- 1.3 A variation to this award does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the award as it existed prior to that variation.
- ~~1.4 Clause 2 Definitions sets out definitions that apply in this award.~~
- ~~1.5 Neither the making of this award nor the operation of any transitional arrangements is intended to result in a reduction in the take home pay of employees covered by the award. On application by or on behalf of an employee who suffers a reduction in take home pay as a result of the making of this award or the operation of any transitional arrangements, the Fair Work Commission may make any order it considers appropriate to remedy the situation.~~

2. Definitions

Clause 2 amended in accordance with [\[2019\] FWCFB 6899](#) at [74] and [\[2019\] FWCFB 6935](#)

In this award, unless the contrary intention appears:

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

Advertising Sales Representative means a person employed, substantially away from the employer's place of business, in soliciting orders, obtaining sales leads or appointments or otherwise promoting sales for, or selling advertising space or time of any kind

Commercial Traveller ~~has the meaning given in clause 4.2~~ means a person employed, substantially away from the employer's place of business, for the purpose of soliciting orders for, or selling articles, goods, wares or merchandise or material for wholesale sale, for resale, or for use in or in connection with the production and/or preparation and/or distribution of commodities for sale by the customer.

commission means any financial incentive payment, financial bonus or financial reward directly related to the soliciting or obtaining of orders or business by an individual Commercial Traveller, but will not be deemed to include any incentive payment, bonus or reward periodically made by the employer on the basis of profitability or performance of the employee, or any section, group or division thereof

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)

home means the employee's usual place of residence

Merchandiser means a person who is employed away from, or substantially away from, the employer's place of business in promoting the employer's products, re-ordering stock and preparing display units and gondola ends, and who in conjunction with these principal functions may solicit orders as a minor feature of the employee's work

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

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

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

Probationary Traveller means an Advertising Sales Representative or Commercial Traveller who has less than ~~three~~ 3 months' service with the employer

standard rate means the minimum weekly rate for a Commercial Traveller in clause 15.1

3. The National Employment Standards and this award

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

4. Coverage

Clause 4.2 deleted in accordance with [\[2019\] FWCFB 6899](#) at [74] and [\[2019\] FWCFB 6935](#)

- 4.1 This occupational award covers employers throughout Australia with respect to Commercial Travellers, Merchandisers and Advertising Sales Representatives and

those employees unless any other modern award contains classifications that apply to such persons, in which case the other modern award prevails.

~~4.2 Commercial Traveller means a person employed, substantially away from the employer's place of business, for the purpose of soliciting orders for, or selling articles, goods, wares or merchandise or material for wholesale sale, for resale, or for use in or in connection with the production and/or preparation and/or distribution of commodities for sale by the customer.~~

4.34.2 This award does not cover:

- (a) employers and employees covered by the *Clerks—Private Sector Award 20XX*; the *Contract Call Centres Award 20XX*; or the *Graphic Arts, Printing and Publishing Award 20XX*;
- (b) employees 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.

4.44.3 This award covers any employer which supplies on-hire employees in occupations set out in clause 4.1 and those on-hire employees, if the employer is not covered by another modern award containing a classification which is more appropriate to the work performed by the employee. ~~This subclause—Clause 4.3~~ operates subject to the exclusions from coverage in this award.

4.54.4 This award covers employers which provide group training services for trainees engaged in any of the occupations set out at clause 4.1 and those trainees engaged by a group training service hosted by a company to perform work at a location where the activities described in clause 4.1 are being performed. ~~This subclause—Clause 4.4~~ operates subject to the exclusions from coverage in this award.

4.64.5 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.

5. Individual flexibility arrangements

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

- (a) arrangements for when work is performed; or
- (b) overtime rates; or

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- (c) penalty rates; or
 - (d) allowances; or
 - (e) annual leave loading.
- 5.2** An agreement must be one that is genuinely made by the employer and the individual employee without coercion or duress.
- 5.3** An agreement may only be made after the individual employee has commenced employment with the employer.
- 5.4** An employer who wishes to initiate the making of an agreement must:
- (a) give the employee a written proposal; and
 - (b) if the employer is aware that the employee has, or reasonably should be aware that the employee may have, limited understanding of written English, take reasonable steps (including providing a translation in an appropriate language) to ensure that the employee understands the proposal.
- 5.5** An agreement must result in the employee being better off overall at the time the agreement is made than if the agreement had not been made.
- 5.6** An agreement must do all of the following:
- (a) state the names of the employer and the employee; and
 - (b) identify the award term, or award terms, the application of which is to be varied; and
 - (c) set out how the application of the award term, or each award term, is varied; and
 - (d) set out how the agreement results in the employee being better off overall at the time the agreement is made than if the agreement had not been made; and
 - (e) state the date the agreement is to start.
- 5.7** An agreement must be:
- (a) in writing; and
 - (b) signed by the employer and the employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
- 5.8** Except as provided in clause 5.7(b), an agreement must not require the approval or consent of a person other than the employer and the employee.
- 5.9** The employer must keep the agreement as a time and wages record and give a copy to the employee.
- 5.10** The employer and the employee must genuinely agree, without duress or coercion to any variation of an award provided for by an agreement.
- 5.11** An agreement may be terminated:

- (a) at any time, by written agreement between the employer and the employee; or
- (b) by the employer or employee giving 13 weeks' written notice to the other party (reduced to 4 weeks if the agreement was entered into before the first full pay period starting on or after 4 December 2013).

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

- 5.12 An agreement terminated as mentioned in clause 5.11(b) ceases to have effect at the end of the period of notice required under that clause.
- 5.13 The right to make an agreement under clause 5 is additional to, and does not affect, any other term of this award that provides for an agreement between an employer and an individual employee.

6. Requests for flexible working arrangements

6.1 Employee may request change in working arrangements

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

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

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

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

6.2 Responding to the request

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

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

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

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

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

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

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

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

6.5 Dispute resolution

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

7. Facilitative provisions

Clause 7.2 amended in accordance with [\[2019\] FWCFB 5145](#) at [50]. Consequential amendment as a result of [PR712261](#).

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

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

Clause	Provision	Agreement between an employer and:
19.4	Time off instead of payment for overtime	An individual

Clause	Provision	Agreement between an employer and:
20.4	Conversion to hourly entitlement	A majority of employees
20.5	Annual leave in advance	An individual
20.10	Cashing out of annual leave	An individual
25.2	Substitution of public holiday	An individual or majority of employees

Part 2—Types of Employment

8. Types of employment

8.1 Employees under this award will be employed in one of the following categories:

- (a) full-time;
- (b) part-time; or
- (c) casual.

9. Full-time employees

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

9.2 Any employee not specifically engaged as a part-time or casual employee is, for all purposes of this award, a full-time employee unless otherwise specified in the award.

10. Part-time employees

10.1 A part-time employee is engaged to work less than an average of 38 hours per week.

10.2 An employee may be employed on a regular part-time basis in any classification in this award.

10.3 Before starting part-time employment the employer and employee must agree on:

- (a) the number of hours to be worked by the employee;
- (b) the days on which they will be worked; and
- (c) the starting and finishing times for the work.

10.4 The terms of this agreement may be varied by consent and such variation will be in writing.

10.5 An employer is required to roster a part-time employee for a minimum of 3 consecutive hours on any shift.

11. Casual employees

Administrative change to clause 11.2(a) by modern awards team.

A Full Bench has been constituted in [AM2017/51](#) to deal with the issue of overtime for casuals.

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

11.2 Casual loading

- (a) For each ~~ordinary~~ hour worked, a casual employee must be paid:
- (i) the minimum hourly rate; and
 - (ii) a loading of **25%** of the minimum hourly rate, for the classification in which they are employed.
- (b) The casual loading is paid instead of entitlements to leave and other matters from which casuals are excluded by the terms of this award and the [NES](#).

11.3 A casual employee must be engaged and paid for at least 2 consecutive hours of work on each occasion they are required to attend work.

11.4 Right to request casual conversion

- (a) A person engaged by a particular employer as a regular casual employee may request that their employment be converted to full-time or part-time employment.
- (b) A **regular casual employee** is a casual employee who has in the preceding period of 12 months worked a pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to perform as a full-time employee or part-time employee under the provisions of this award.
- (c) A regular casual employee who has worked equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to full-time employment.
- (d) A regular casual employee who has worked less than equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to part-time employment consistent with the pattern of hours previously worked.
- (e) Any request under ~~this subclause~~ clause 11.4 must be in writing and provided to the employer.
- (f) Where a regular casual employee seeks to convert to full-time or part-time employment, the employer may agree to or refuse the request, but the request may only be refused on reasonable grounds and after there has been consultation with the employee.

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- (g) Reasonable grounds for refusal include that:
- (i) it would require a significant adjustment to the casual employee's hours of work in order for the employee to be engaged as a full-time or part-time employee in accordance with the provisions of this award – that is, the casual employee is not truly a regular casual employee as defined in clause 11.4(b);
 - (ii) it is known or reasonably foreseeable that the regular casual employee's position will cease to exist within the next 12 months;
 - (iii) it is known or reasonably foreseeable that the hours of work which the regular casual employee is required to perform will be significantly reduced in the next 12 months; or
 - (iv) it is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the employee's hours of work are required to be performed in the next 12 months which cannot be accommodated within the days and/or hours during which the employee is available to work.
- (h) For any ground of refusal to be reasonable, it must be based on facts which are known or reasonably foreseeable.
- (i) Where the employer refuses a regular casual employee's request to convert, the employer must provide the casual employee with the employer's reasons for refusal in writing within 21 days of the request being made.
- (j) If the employee does not accept the employer's refusal, this will constitute a dispute that will be dealt with under the dispute resolution procedure in clause 28—Dispute resolution. Under that procedure, the employee or the employer may refer the matter to the Fair Work Commission if the dispute cannot be resolved at the workplace level.
- (k) Where it is agreed that a casual employee will have their employment converted to full-time or part-time employment as provided for in clause 11.4, the employer and employee must discuss and record in writing:
- (i) the form of employment to which the employee will convert – that is, full-time or part-time employment; and
 - (ii) if it is agreed that the employee will become a part-time employee, the matters referred to in clause 10.3.
- (l) The conversion will take effect from the start of the next pay cycle following such agreement being reached unless otherwise agreed.
- (m) Once a casual employee has converted to full-time or part-time employment, the employee may only revert to casual employment with the written agreement of the employer.
- (n) A casual employee must not be engaged and re-engaged (which includes a refusal to re-engage), or have their hours reduced or varied, in order to avoid any right or obligation under clause 11.4.

- (o) Nothing in clause 11.4 obliges a regular casual employee to convert to full-time or part-time employment, nor permits an employer to require a regular casual employee to so convert.
- (p) Nothing in clause 11.4 requires an employer to increase the hours of a regular casual employee seeking conversion to full-time or part-time employment.
- (q) An employer must provide a casual employee, whether a regular casual employee or not, with a copy of the provisions of ~~this subclause~~ clause 11.4 within the first 12 months of the employee's first engagement to perform work. In respect of casual employees already employed as at 1 October 2018, an employer must provide such employees with a copy of the provisions of clause 11.4~~this subclause~~ by 1 January 2019.
- (r) A casual employee's right to request to convert is not affected if the employer fails to comply with the notice requirements in clause 11.4(q).

12. Statement and terms of engagement

Within 14 days from the commencement of employment, the employer will provide to each employee a written statement containing the information set out below:

- (a) the remuneration payable;
- (b) the vehicle allowance payable or car supplied;
- (c) the rate or rates of commission payable;
- (d) the conditions and terms on which commission or any part thereof is payable or not payable;
- (e) deductions, if any, which are made or may be made to the commission payable; and
- (f) if the employee has a territory, the boundaries or limits of the territory, provided that the employer may change territory boundaries or limits, or move employees from one territory to another on advice to the employee/s concerned.

Part 3—Hours of Work

13. Ordinary hours of work

- 13.1 Maximum weekly hours and requests for flexible working arrangements are provided for in the [NES](#).
- 13.2 The ordinary hours of work for a full-time employee are an average of 38 per week with a maximum of 152 hours over 28 consecutive days.
- 13.3 The ordinary hours of work may be worked on any days of the week.

13.4 The ordinary hours of work will not exceed 10 hours on any day.

14. Breaks

An employer will allow an employee reasonable time to have regular and normal meals on each day of the employee’s employment.

Part 4—Wages and Allowances

15. Classifications and minimum rates-wages

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

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

Clause 15.2 amended in accordance with [\[2019\] FWCFB 6899](#) at [76] and [\[2019\] FWCFB 6935](#)

15.1 An employer must pay an adult employee, other than those employees specified in clause 15.2, the following minimum wages for ordinary hours worked by the employee:

Classification level	Minimum weekly rate (<u>full-time employee</u>) \$	Minimum hourly rate \$
Probationary Traveller ¹	778.86	20.50
Merchandiser	803.2	21.14
Commercial Traveller / Advertising Sales Representative	865.4	22.77

¹ The minimum weekly rate for a Probationary Traveller is based on 90% of the minimum weekly rate for a Commercial Traveller/Advertising Sales Representative.

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

15.2 The following adult employees are not entitled to the minimum wages set out in the table in clause 15.1:

- (a) an employee receiving a supported wage (refer to Schedule C—Supported Wage System); and
- (b) a trainee
 - (i) Schedule E to the *Miscellaneous Award 20XX+0* sets out minimum wage rates and conditions for employees undertaking traineeships.
 - (ii) This award incorporates the terms of Schedule E to the *Miscellaneous Award 20XX+0* as at ~~1 July 2018~~ 1 July 2019. Provided that any reference to “this award” in Schedule E to the *Miscellaneous Award*

20XX+0 is to be read as referring to the *Commercial Sales Award 20XX+0* and not the *Miscellaneous Award 20XX+0*.

15.3 Junior minimum ~~wages~~ rates

The minimum wages for a junior are the following percentages of the wage rate for Commercial Traveller/Advertising Sales Representative:

Age	% of Commercial Traveller / Advertising Sales Representative rate
Under 19 years	67.5
19 years	80
20 years	90

15.4 No Commercial Traveller (or Probationary Traveller) will be remunerated solely by commission payment, salary or retainer, that is lower than the minimum rate for a Commercial Traveller (or Probationary Traveller) in clause 15.1.

16. Payment of wages

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

16.1 Employees will be paid weekly, fortnightly or monthly.

16.2 Wages will be paid by cash, cheque or electronic funds transfer into the employee's nominated bank account.

16.3 Payment on termination of employment

(a) The employer must pay an employee no later than 7 days after the day on which the employee's employment terminates:

- (i) the employee's wages under this award for any complete or incomplete pay period up to the end of the day of termination; and
- (ii) all other amounts that are due to the employee under this award and the [NES](#).

(b) The requirement to pay wages and other amounts under ~~paragraph (a)~~ clause 16.3(a) is subject to further order of the Commission and the employer making deductions authorised by this award or the [Act](#).

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

NOTE 2: ~~Paragraph (b)~~ Clause 16.3(b) allows the Commission to make an order delaying the requirement to make a payment under ~~this~~ clause 16.3. For example, the Commission could make an order delaying the requirement to pay redundancy pay if

an employer makes an application under section 120 of the [Act](#) for the Commission to reduce the amount of redundancy pay an employee is entitled to under the [NES](#).

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

17. Allowances

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

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

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

17.1 An employer must pay to an employee the allowances the employee is entitled to under ~~this~~ clause 17. See Schedule B—Summary of Monetary Allowances for a summary of monetary allowances and method of adjustment.

17.2 Expense-related allowances

(a) Weekend allowance

An allowance of **\$46.57** will be paid to an employee required by the employer to be away from home (a usual place of residence) or headquarters for any weekend.

(b) Living away from home allowance

An employee required to remain away from their usual place of residence for ~~two~~ 2 or more consecutive nights in any one week, Monday to Sunday inclusive, in servicing the employee's allocated area will be paid an additional allowance of **\$58.63** per week.

(c) Vehicle allowance

An employee required by the employer to use the employee's motor vehicle in the performance of the employee's duties will be paid an allowance of:

(i) **\$0.78** per kilometre, for use of the employee's own motor car; and

(ii) **\$0.26** per kilometre for use of the employee's own motorcycle.

(d) Vehicle modification reimbursement

Where the employer requires the employee to alter or modify the employee's own vehicle, the employer will reimburse to the employee the full cost of such alterations or modifications.

(e) Telephone allowance

- (i) Where an employee does not have a telephone, modem or broadband connection and, at the written request of the employer, the employee is required to have such equipment, the employer must reimburse the reasonable cost of purchase, installation and rental of this equipment.
- (ii) Where an employee makes telephone calls in connection with their employment on the employee's private telephone at the direction of the employer, the employer must reimburse the reasonable cost of such calls. The employer may request details of all such calls claimed by the employee.

(f) Expenses and accommodation reimbursement

- (i) In addition to the remuneration payable under clause 15— Classifications and minimum rates, all reasonable expenses actually and properly incurred by the employee in the discharge of the duties will be reimbursed by the employer, including:
 - approved entertainment expenses;
 - vehicle parking fees where actually and necessarily incurred;
 - ~~three~~ 3 star class hotel/motel accommodation;
 - expenses for meals and morning or afternoon tea when the employee is required to be away overnight from the usual place of residence at the employee's usual time for taking such meal, in the course of their employment;
 - laundry expenses incurred by the employee after they have been away from their place of residence for more than one weekend in the course of their employment;
 - first class rail tickets with sleeping accommodation (if available) on overnight journeys, and economy class airline tickets where required; and
 - the cost of garaging by an employee entitled to the living away from home allowance in clause 17.2(b) when such is required by the employer.
- (ii) Such expenses that can be reasonably anticipated will be paid in advance.

(g) Injury or illness requiring transport

If an employee suffers an injury or illness requiring return to their usual place of residence or to a hospital or other place where the employee may receive medical care, the expenses actually incurred in travelling to any such location will be reimbursed by the employer.

(h) Change of residence

Any employee (other than a casual) who is directed or required by the employer, in writing, to relocate the employee's residence to another area, will be reimbursed reasonable costs for relocating personal and household effects and members of their immediate dependent family. Reasonable costs expressed in ~~this~~ clause 17.2(h) are to be the amount agreed upon, in writing, between the employer and employee prior to any relocation.

(i) Training program

An employee required by the employer to undertake any course of instruction or training will have all fees and expenses reimbursed by the employer.

18. Superannuation

18.1 Superannuation legislation

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

18.2 Employer contributions

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

18.3 Voluntary employee contributions

- (a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 18.2.
- (b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.
- (c) The employer must pay the amount authorised under clauses 18.3(a) or 18.3(b) no later than 28 days after the end of the month in which the deduction authorised under clauses 18.3(a) or 18.3(b) was made.

18.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 18.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 18.2 and pay the amount authorised under clauses 18.3(a) or 18.3(b) to one of the following superannuation funds or its successor:

- (a) AustralianSuper;
- (b) LUCRF Super;
- (c) CareSuper;
- (d) REST Superannuation;
- (e) Sunsuper;
- (f) MTAA Superannuation Fund;
- (g) 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
- (h) a superannuation fund or scheme which the employee is a defined benefit member of.

18.5 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 18.2 and pay the amount authorised under clauses 18.3(a) or 18.3(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—Overtime and Penalty Rates

19. Overtime and penalty rates

A Full Bench has been constituted in [AM2017/51](#) to deal with the issue of overtime for casuals.

19.1 Overtime

An employee directed by the employer to perform any work after 6.00 pm Monday to Friday inclusive, or in excess of the ordinary hours of work provided in clause 13—Ordinary hours of work, will be paid at a rate of **150%** of the applicable minimum hourly rate set out in clause 15—Classifications and minimum rates.

19.2 Saturday work

An employee directed by the employer to perform any work on a Saturday will be paid at a rate of **150%** of the applicable minimum hourly rate set out in clause 15—Classifications and minimum rates, with a minimum payment of ~~two~~2 hours.

19.3 Sunday work

An employee directed by the employer to perform any work on a Sunday will be paid at a rate of **200%** of the applicable minimum hourly rate set out in clause 15—Classifications and minimum rates, with a minimum payment of ~~three~~3 hours.

19.4 Time off instead of payment for overtime

- (a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (b) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 19.4.
- (c) An agreement must state each of the following:
 - (i) the number of overtime hours to which it applies and when those hours were worked;
 - (ii) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
 - (iii) that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;
 - (iv) that any payment mentioned in ~~subparagraph (iii)-clause~~ 19.4(c)(iii) must be made in the next pay period following the request.

NOTE: An example of the type of agreement required by ~~this~~ clause 19.4 is set out at Schedule D—Agreement for Time Off Instead of Payment for Overtime.

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There is no requirement to use the form of agreement set out at Schedule D—Agreement for Time Off Instead of Payment for Overtime. An agreement under clause 19.4 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

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

EXAMPLE: By making an agreement under clause 19.4 an employee who worked 2 overtime hours is entitled to 2 hours' time off.

- (e) Time off must be taken:
 - (i) within the period of 6 months after the overtime is worked; and
 - (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (f) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 19.4 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in ~~paragraph (e)~~ clause 19.4(e), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (h) The employer must keep a copy of any agreement under clause 19.4 as an employee record.
- (i) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (j) An employee may, under section 65 of the [Act](#), request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 19.4 will apply, including the requirement for separate written agreements under ~~paragraph (b)~~ [clause 19.4\(b\)](#) for overtime that has been worked.

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

- (k) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 19.4 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

NOTE: Under section 345(1) of the [Act](#), a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 19.4.

Part 6—Leave and Public Holidays

20. Annual leave

20.1 Annual leave is provided for in the [NES](#).

20.2 Annual leave does not apply to a casual employee.

20.3 Leave loading

- (a) During a period of annual leave an employee who does not receive commission must also be paid a loading of **17.5%** calculated on the employee's minimum rate of pay as prescribed by clause 15— Classifications and minimum [rates](#).
- (b) Where the employee receives commission, such employee will, in addition to their ordinary pay, receive either the average of the commission payments earned over the preceding 12 months or the loading prescribed in clause 20.3(a), whichever is the greater.

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

20.4 Conversion to hourly entitlement

An employer may reach agreement with the majority of employees concerned to convert the annual leave entitlement in section 87 of the [Act](#) to an hourly entitlement for administrative ease.

20.5 Annual leave in advance

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

NOTE: An example of the type of agreement required by clause 20.5 is set out at Schedule E—Agreement to Take Annual Leave in Advance. There is no requirement to use the form of agreement set out at Schedule E—Agreement to Take Annual Leave in Advance.

- (c) The employer must keep a copy of any agreement under clause 20.5 as an employee record.
- (d) If, on the termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in

accordance with an agreement under clause 20.5, the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

20.6 Close-down

An employer may require an employee to take annual leave as part of a close-down of its operations, by giving at least ~~four~~ 4 weeks' notice.

20.7 Excessive leave accruals: general provision

NOTE: Clauses 20.7 to 20.9 contain provisions, additional to the [NES](#), about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the [Act](#).

- (a) An employee has an **excessive leave accrual** if the employee has accrued more than 8 weeks' paid annual leave.
- (b) If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (c) Clause 20.8 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 20.9 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

20.8 Excessive leave accruals: direction by employer that leave be taken

- (a) If an employer has genuinely tried to reach agreement with an employee under clause 20.7(b) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.
- (b) However, a direction by the employer under ~~paragraph (a)~~ [clause 20.8\(a\)](#):
 - (i) is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements (whether made under clause 20.7, 20.8 or 20.9 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.

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- (c) The employee must take paid annual leave in accordance with a direction under ~~paragraph (a) clause~~ 20.8(a) that is in effect.
- (d) An employee to whom a direction has been given under ~~paragraph (a) clause~~ 20.8(a) may request to take a period of paid annual leave as if the direction had not been given.

NOTE 1: Paid annual leave arising from a request mentioned in ~~paragraph (d) clause~~ 20.8(d) may result in the direction ceasing to have effect. See clause 20.8(b)(i).

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

20.9 Excessive leave accruals: request by employee for leave

- (a) If an employee has genuinely tried to reach agreement with an employer under clause 20.7(b) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.
- (b) However, an employee may only give a notice to the employer under ~~paragraph (a) clause~~ 20.9(a) if:
 - (i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and
 - (ii) the employee has not been given a direction under clause 20.8(a) that, when any other paid annual leave arrangements (whether made under clause 20.7, 20.8 or 20.9 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.
- (c) A notice given by an employee under ~~paragraph (a) clause~~ 20.9(a) must not:
 - (i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 20.7, 20.8 or 20.9 or otherwise agreed by the employer and employee) are taken into account; or
 - (ii) provide for the employee to take any period of paid annual leave of less than one week; or
 - (iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or
 - (iv) be inconsistent with any leave arrangement agreed by the employer and employee.
- (d) An employee is not entitled to request by a notice under ~~paragraph (b) clause~~ 20.9(a) more than 4 weeks' paid annual leave in any period of 12 months.
- (e) The employer must grant paid annual leave requested by a notice under ~~paragraph (a) clause~~ 20.9(a).

20.10 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 20.10.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 20.10.
- (c) An employer and an employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee.
- (d) An agreement under clause 20.10 must state:
 - (i) the amount of leave to be cashed out and the payment to be made to the employee for it; and
 - (ii) the date on which the payment is to be made.
- (e) An agreement under clause 20.10 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 20.10 as an employee record.

NOTE 1: Under section 344 of the [Act](#), an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 20.10.

NOTE 2: Under section 345(1) of the [Act](#), a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 20.10.

NOTE 3: An example of the type of agreement required by clause 20.10 is set out at Schedule F—Agreement to Cash Out Annual Leave. There is no requirement to use the form of agreement set out at Schedule F—Agreement to Cash Out Annual Leave.

21. Personal/carer's leave and compassionate leave

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

22. Parental leave and related entitlements

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

23. Community service leave

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

24. Unpaid family and domestic violence leave

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

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

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

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

25. Public holidays

Clause 25.2 amended in accordance with [\[2019\] FWCFB 5145](#) at [50] and [PR712261](#).

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

25.2 Substitution of public holidays by agreement at the enterprise

~~(a) By agreement between the employer and the majority of employees in the enterprise or part of the enterprise concerned, an alternative day may be taken as the public holiday instead of any of the prescribed days.~~

~~(b) An employer and an individual employee may agree to the employee taking another day as the public holiday instead of the day which is being observed as the public holiday in the enterprise or part of the enterprise concerned.~~

(a) An employer and employee may agree to substitute another day for a day that would otherwise be a public holiday under the NES.

(b) An employer and employee may agree to substitute another part-day for a part-day that would otherwise be a part-day public holiday under the NES.

25.3 All work done by an employee, other than travelling, at the request of the employer on a public holiday or a substitute day will be paid at the rate of **250%** of the minimum hourly rate with a minimum payment of ~~three-3~~ 3 hours. Provided that instead of such payment, ~~two-2~~ and a half days' leave with pay may be granted in respect of each such holiday, at a time mutually agreed between the employer and the employee.

25.4 All travelling in connection with work by an employee at the request of the employer on a public holiday or a substitute day will be paid for at the rate of **150%** of the minimum hourly rate with a minimum payment as for ~~three-3~~ 3 hours' travelling. Provided that instead of such payment, one and a half days' leave with pay may be

granted in respect of each holiday, at a time mutually agreed between the employer and the employee.

25.5 Part-day public holidays

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

Part 7—Consultation and Dispute Resolution

26. Consultation about major workplace change

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

- (a) give notice of the changes to all employees who may be affected by them and their representatives (if any); and
- (b) discuss with affected employees and their representatives (if any):
 - (i) the introduction of the changes; and
 - (ii) their likely effect on employees; and
 - (iii) measures to avoid or reduce the adverse effects of the changes on employees; and
- (c) commence discussions as soon as practicable after a definite decision has been made.

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

- (a) their nature; and
- (b) their expected effect on employees; and
- (c) any other matters likely to affect employees.

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

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

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

- (a) termination of employment; or

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

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

27. Consultation about changes to rosters or hours of work

27.1 Clause 27 applies if an employer proposes to change the regular roster or ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic or unpredictable.

27.2 The employer must consult with any employees affected by the proposed change and their representatives (if any).

27.3 For the purpose of the consultation, the employer must:

- (a) provide to the employees and representatives mentioned in clause 27.2 information about the proposed change (for example, information about the nature of the change and when it is to begin); and
- (b) invite the employees to give their views about the impact of the proposed change on them (including any impact on their family or caring responsibilities) and also invite their representative (if any) to give their views about that impact.

27.4 The employer must consider any views given under clause 27.3(b).

27.5 Clause 27 is to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.

28. Dispute resolution

28.1 Clause 28 sets out the procedures to be followed if a dispute arises about a matter under this award or in relation to the [NES](#).

28.2 The parties to the dispute must first try to resolve the dispute at the workplace through discussion between the employee or employees concerned and the relevant supervisor.

28.3 If the dispute is not resolved through discussion as mentioned in clause 28.2, the parties to the dispute must then try to resolve it in a timely manner at the workplace

through discussion between the employee or employees concerned and more senior levels of management, as appropriate.

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

Part 8—Termination of Employment and Redundancy

29. Termination of employment

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

29.1 Notice of termination by an employee

- (a) Clause 29.1 applies to all employees except those identified in sections 123(1) and 123(3) of the [Act](#).

An employee must give the employer notice of termination in accordance with **Table 1—Period of notice**

- (b) of at least the period specified in column 2 according to the period of continuous service of the employee specified in column 1.

Table 1—Period of notice

Column 1	Column 2
Employee's period of continuous service with the employer at the end of the day the notice is given	Period of notice
Not more than 1 year	1 week

Column 1	Column 2
Employee’s period of continuous service with the employer at the end of the day the notice is given	Period of notice
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

NOTE: The notice of termination required to be given by an employee is the same as that required of an employer except that the employee does not have to give additional notice based on the age of the employee.

- (c) In ~~paragraph (b) clause~~ 29.1(b) **continuous service** has the same meaning as in section 117 of the [Act](#).
- (d) If an employee who is at least 18 years old does not give the period of notice required under ~~paragraph (b) clause~~ 29.1(b), then the employer may deduct from wages due to the employee under this award an amount that is no more than one week’s wages for the employee.
- (e) If the employer has agreed to a shorter period of notice than that required under ~~paragraph (b) clause~~ 29.1(b), then no deduction can be made under ~~paragraph (d) clause~~ 29.1(d).
- (f) Any deduction made under ~~paragraph (d) clause~~ 29.1(d) must not be unreasonable in the circumstances.

29.2 Job search entitlement

- (a) Where an employer has given notice of termination to an employee, the employee must be allowed time off without loss of pay of up to one day for the purpose of seeking other employment.
- (b) The time off under clause 29.2 is to be taken at times that are convenient to the employee after consultation with the employer.

30. Redundancy

Clause 30 substituted in accordance with [\[2019\] FWCFB 2548](#) at [6] and [PR706936](#).

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

30.1 Transfer to lower paid duties on redundancy

- (a) Clause 30.1 applies if, because of redundancy, an employee is transferred to new duties to which a lower ordinary rate of pay applies.**
- (b) The employer may:**
 - (i) give the employee notice of the transfer of at least the same length as the employee would be entitled to under section 117 of the Act as if it were a notice of termination given by the employer; or**

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

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

30.2 Employee leaving during redundancy notice period

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

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

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

30.3 Job search entitlement

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

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

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

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

(e) This entitlement applies instead of clause 29.2.

Schedule A—Summary of Hourly Rates of Pay

A Full Bench has been constituted in [AM2017/51](#) to deal with the issue of overtime for casuals. See [\[2019\] FWCFB 6935](#)

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

Schedule A amended in accordance with [\[2019\] FWCFB 6899](#) at [77] and [\[2019\] FWCFB 6935](#)

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

A.1 Full-time and part-time adult employees

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

	Ordinary hours	Saturday	Sunday	Public holiday	
				Other than travelling Soliciting orders	Travelling for work
	% of minimum hourly rate				
	100%	150%	200%	250%	150%
	\$	\$	\$	\$	\$
Probationary Traveller	20.50	30.75	41.00	51.25	30.75
Merchandiser	21.14	31.71	42.28	52.85	31.71
Commercial Traveller / Advertising Sales Representative	22.77	34.16	45.54	56.93	34.16

Commented [FWC1]: See cl.15.1

Commented [FWC2]: See cl 19.2 and 19.3.

Commented [FWC3]: See cl 25.3 and 25.4.

A.1.2 Full-time and part-time employees—overtime rates

	Monday to Friday ¹	Saturday	Sunday	Public holidays	
				Other than travelling Soliciting orders	Travelling for work
	% of minimum hourly rate				
	150%	150%	200%	250%	150%
	\$	\$	\$	\$	\$
Probationary Traveller	30.75	30.75	41.00	51.25	30.75
Merchandiser	31.71	31.71	42.28	52.85	31.71
Commercial Traveller / Advertising Sales Representative	34.16	34.16	45.54	56.93	34.16

Commented [FWC4]: See cl.15.1

Commented [FWC5]: See cl 19.1.

Commented [FWC6]: See cl 19.2 and 19.3.

Commented [FWC7]: See cl 25.3 and 25.4.

¹ After 6.00 pm or in excess of ordinary hours.

A.2 Casual adult employees

A.2.1 Casual employees—ordinary and penalty rates

	Ordinary hours	Saturday	Sunday	Public holiday	
				Other than travelling So liciting orders	Travelling for work
	% of minimum hourly rate				
	125%	175%	225%	275%	175%
		\$	\$	\$	\$
Probationary Traveller	25.63	35.88	46.13	56.38	35.88
Merchandiser	26.43	37.00	47.57	58.14	37.00
Commercial Traveller/Advertising Sales Representative	28.46	39.85	51.23	62.62	39.85

Commented [FWC8]: See cl.15.1

Commented [FWC9]: Minimum hourly rate + 25% casual loading in cl 11.2.

Commented [FWC10]: Percentage in cl 19.2 + 25% casual loading in cl 11.2.

Commented [FWC11]: Percentage in cl 19.3 + 25% casual loading in cl 11.2.

Commented [FWC12]: Percentage in cl 25.3 + 25% casual loading in cl 11.2.

Commented [FWC13]: Percentage in cl 25.4 + 25% casual loading in cl 11.2.

A.3 Junior employees

The **junior hourly rate** is based on a percentage of the adult Commercial Traveller/Advertising Sales Representative **rate** in accordance with clause 15.3 as specified. Adult rates apply from 21 years of age in accordance with clause 15.3.

A.3.1 Junior employees (Commercial Traveller/Advertising Sales Representative)—ordinary and penalty rates

Age	Junior hourly rate—ordinary hours	Saturday	Sunday	Public holidays	
				Other than travelling So liciting orders	Travelling for work
	% of junior hourly rate				
	100%	150%	200%	250%	150%
	\$	\$	\$	\$	\$
Under 19 years	15.37	23.06	30.74	38.43	23.06
19 years	18.22	27.33	36.44	45.55	27.33
20 years	20.49	30.74	40.98	51.23	30.74

Commented [FWC14]: Relevant percentage in clause 15.3 of the minimum weekly rate in cl 15.1.

Commented [FWC15]: See cl 19.2 and 19.3.

Commented [FWC16]: See cl 25.3 and 25.4.

A.3.2 Junior employees (Commercial Traveller/Advertising Sales Representative)—overtime

Age	Monday to Friday	Saturday	Sunday	Public holidays	
				Other than travelling Soliciting orders	Travelling for work
	% of junior hourly rate				
	150%	150%	200%	250%	150%
	\$	\$	\$	\$	\$
Under 19 years	23.06	23.06	30.74	38.43	23.06
19 years	27.33	27.33	36.44	45.55	27.33
20 years	30.74	30.74	40.98	51.23	30.74

Commented [FWC17]: Relevant percentage in clause 15.3 of the minimum weekly rate in cl 15.1.

Commented [FWC18]: See cl 19.1.

Commented [FWC19]: See cl 19.2 and 19.3.

Commented [FWC20]: See cl 25.3 and 25.4.

A.3.3 Junior employees (Commercial Traveller/Advertising Sales Representative)—casual employees—ordinary and penalty rates

Age	Casual junior rate—ordinary hours	Saturday	Sunday	Public holidays	
				Other than travelling Soliciting orders	Travelling for work
	% of junior hourly rate				
	125%	175%	225%	275%	175%
	\$	\$	\$	\$	\$
Under 19 years	19.21	26.90	34.58	42.27	26.90
19 years	22.78	31.89	41.00	50.11	31.89
20 years	25.61	35.86	46.10	56.35	35.86

Commented [FWC21]: Relevant percentage in clause 15.3 of the minimum weekly rate in cl 15.1.

Commented [FWC22]: Junior hourly rate + 25% casual loading in cl 11.2.

Commented [FWC23]: Percentage in cl 19.2 + 25% casual loading in cl 11.2.

Commented [FWC24]: Percentage in cl 19.3 + 25% casual loading in cl 11.2.

Commented [FWC25]: Percentage in cl 25.3 + 25% casual loading in cl 11.2.

Commented [FWC26]: Percentage in cl 25.4 + 25% casual loading in cl 11.2.

Schedule B—Summary of Monetary Allowances

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

See clause 17—Allowances for full details of allowances payable under this award.

B.1 Expense-related allowances

B.1.1 The following expense-related allowances will be payable to employees in accordance with clause 17.2:

Allowance	Clause	\$	Payable
Weekend allowance	17.2(a)	46.57	per weekend
Living away from home allowance	17.2(b)	58.63	per week
Vehicle allowance—Motor car	17.2(c)(i)	0.78	per km
Vehicle allowance—Motorcycle	17.2(c)(ii)	0.26	per km

B.1.2 Adjustment of expense-related allowances

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

Allowance	Applicable Consumer Price Index figure
Vehicle allowance	Private motoring sub-group
Living away from home allowance	Domestic holiday travel and accommodation sub-group
Weekend allowance	Domestic holiday travel and accommodation sub-group

Schedule C—Supported Wage System

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

- C.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.
- C.2** In this schedule:
- approved assessor** means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual’s productive capacity within the supported wage system
- assessment instrument** means the tool provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system
- disability support pension** means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991* (Cth), as amended from time to time, or any successor to that scheme
- relevant minimum wage** means the minimum wage prescribed in this award for the class of work for which an employee is engaged
- supported wage system** (SWS) means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from the following website: www.jobaccess.gov.au
- SWS wage assessment agreement** means the document in the form required by the Department of Social Services that records the employee’s productive capacity and agreed wage rate
- C.3 Eligibility criteria**
- C.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.
- C.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.
- C.4 Supported wage rates**
- C.4.1** Employees to whom this schedule applies will be paid the applicable percentage of the relevant minimum wage according to the following schedule:

Assessed capacity (clause C.5)	Relevant minimum wage
%	%
10	10
20	20
30	30
40	40
50	50
60	60
70	70
80	80
90	90

C.4.2 Provided that the minimum amount payable must be not less than **\$87** per week.

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

C.5 Assessment of capacity

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

C.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](#).

C.6 Lodgement of SWS wage assessment agreement

C.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.

C.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.

C.7 Review of assessment

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

C.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.

C.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.

C.10 Trial period

C.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~~ 4 weeks) may be needed.

C.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.

C.10.3 The minimum amount payable to the employee during the trial period must be no less than \$87 per week.

C.10.4 Work trials should include induction or training as appropriate to the job being trialled.

C.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 C.5.

Schedule D—Agreement for Time Off Instead of Payment for Overtime

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

Name of employee: _____

Name of employer: _____

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

Date and time overtime started: ___/___/20___ am/pm

Date and time overtime ended: ___/___/20___ am/pm

Amount of overtime worked: _____ hours and _____ minutes

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

Signature of employee: _____

Date signed: ___/___/20___

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ___/___/20___

Schedule E—Agreement to Take Annual Leave in Advance

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

Name of employee: _____

Name of employer: _____

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

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

The leave in advance will commence on: ____/____/20____

Signature of employee: _____

Date signed: ____/____/20____

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

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

I agree that:

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

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ____/____/20____

Schedule F—Agreement to Cash Out Annual Leave

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

Name of employee: _____

Name of employer: _____

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

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

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

The payment will be made to the employee on: ____/____/20__

Signature of employee: _____

Date signed: ____/____/20__

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20__

Include if the employee is under 18 years of age:

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ____/____/20__

Schedule G—Part-day Public Holidays

Schedule G amended in accordance with [\[2019\] FWCFCB 5145](#) at [52] and [PR712261](#).

- G.1** This schedule operates where this award otherwise contains provisions dealing with public holidays that supplement the [NES](#).
- G.2** Where a part-day public holiday is declared or prescribed between 7.00 pm and midnight on Christmas Eve (24 December in each year) or New Year's Eve (31 December in each year) the following will apply on Christmas Eve and New Year's Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:
- (a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the [NES](#).
 - (b) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of exercising their right under the [NES](#) does not work, they will be paid their ordinary rate of pay for such hours not worked.
 - (c) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of being on annual leave does not work, they will be taken not to be on annual leave between those hours of 7.00 pm and midnight that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.
 - (d) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.
 - (e) Excluding annualised salaried employees to whom clause G.2(f) applies, where an employee works any hours between 7.00 pm and midnight they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.
 - (f) Where an employee is paid an annualised salary under the provisions of this award and is entitled under this award to time off in lieu or additional annual leave for work on a public holiday, they will be entitled to time off in lieu or pro-rata annual leave equivalent to the time worked between 7.00 pm and midnight.
 - (g) An employee not rostered to work between 7.00 pm and midnight, other than an employee who has exercised their right in accordance with clause G.2(a), will not be entitled to another day off, another day's pay or another day of annual leave as a result of the part-day public holiday.

G.3 An employer and employee may agree to substitute another part-day for a part-day that would otherwise be a part-day public holiday under the NES.

G.3G.4 This schedule is not intended to detract from or supplement the [NES](#).