



Transitioning to the Modern Award

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This information is provided as general advice on the workplace relations system and the transition to the SACS modern award. It does not constitute legal advice and it is always advisable to seek further information regarding specific workplace relations issues, as different individual organisation circumstances and situations can influence what applies.

Session Schedule

- National IR system
- National Employment Standards (NES)
- The SACS Modern Award coverage
- Transitional arrangements
- The pay equity decision background
- Modern Award conditions

Industrial Relations Legislation

- **WorkChoices** – March 27th 2006

National System Employers were defined as Constitutional Corporations and their employees, plus all other employees employed in Victoria, ACT and NT.

- **Fair Work Act 2009** – July 1st 2009

Extended the meaning of ***national system employer*** in relation to a referring State

- **State Referral Legislation** – NSW, Qld, SA, Tas.
from January 1st 2010

Constitutional Corporations

- A foreign corporation
- An incorporated body under the Corporations Act 2001 or established as a body corporate under other legislation, that engages in substantial trading or financial activities- Pty Ltd, Inc.

Engage in “substantial” trading activities

Trade = provide goods or services for fees

Excludes- donations, Govt. funding

Non Constitutional Corporations

- Unincorporated bodies
- A sole trader
- A partnership
- Various trusts

Trustees of a trust affect CC status, where the trustee is an incorporated body that trades

Who is Covered by the National Industrial Relations (IR) System?

Nationally—all employment by **constitutional corporations**, and in:

- **Victoria, ACT & NT**—all other employment
- **NSW, Qld & SA**—all other private sector employment (from 1 January 2010)
- **Tasmania**—all other private sector and local government employment (from 1 January 2010).

Who is Not Covered by the National IR System

- **Western Australia**—state public sector and local government employment and employment by **non-constitutional corporations** in the private sector
- **NSW, Qld & SA**—state public sector and local government employment
- **Tasmania**—state public sector employment

Employers and Employees Not Covered by the National IR System

Non-Constitutional Corporations Western Australia
Remain covered by the applicable state Industrial Relations system.

However, employees covered by state IR system have coverage of national system entitlements to:

- Unpaid parental leave
- Notice of termination or payment in lieu of notice
- Protection from unlawful termination of employment

Parts 6-3 and 6-4 of the *Fair Work Act 2009* (Cth).

National System Fair Work Act 2009

- National Employment Standards
(NES)
- Modern Awards
- Transitional Provisions

National Employment Standards (NES)

- Minimum standards/conditions for National system employees
- Commenced 1 January 2010
- No detriment rule – line by line test
- Supplementary entitlements – contained in awards or enterprise agreements

National Employment Standards (NES)

- 1. Maximum ordinary hours**
- 2. Requests for flexible working arrangements**
- 3. Parental Leave**
- 4. Annual Leave**
- 5. Personal Leave**
- 6. Community Service Leave**
- 7. Long Service Leave**
- 8. Public Holidays**
- 9. Notice of Termination and Redundancy**
- 10. Fair Work Information Statement**

National Employment Standards

- **Maximum Weekly Hours**
 - 38 per week full-time
 - Reasonable Additional Hours
- **Flexible Working Arrangements**
 - 12 months continuous service
 - Child under school age
 - Disabled child under 18
 - Request in Writing
 - Refusal only on reasonable business grounds

National Employment Standards

- **Parental Leave**
 - **Up to 24 months unpaid (12 + 12)**
 - **12 months continuous service**
 - **Only three weeks can be taken concurrently**
- **Annual Leave**
 - **4 weeks**
 - **5 weeks – shift workers**
- **May cash out if**
 - **Award/agreement covered and award/agreement provides for it; or**
 - **“Award/agreement Free” and employer and employee agree in writing**

National Employment Standards

Personal/ Carers' Leave

- 10 days personal/carers' leave per annum**
- 2 days unpaid carers' leave**
- Provide notice – as soon as practicable**
- Provide evidence – employer requests it - satisfy a reasonable person**
- Agreements may provide for cashing out**

Compassionate Leave

- 2 days leave for each occasion**

National Employment Standards

- **Community Service Leave/Jury Service**
 - Paid Jury Service Leave - Up to 10 days
 - Unpaid Community Service Leave for voluntary emergency management activity
- **Long Service Leave**
 - Currently being developed
 - Existing entitlements continue to apply

National Employment Standards

- **Public Holidays**
 - Permanent employees can be absent with pay
 - Employee may refuse to work if request is unreasonable
- **Notice of Termination and Redundancy**
 - Written notice
 - Provide notice or payment in lieu
 - If position is redundant, may be entitled to payment (15 +)
- **Fair Work Information Sheet**
 - All NEW employees

Standard Notice Provision

Employee's period of continuous service with the employer

Period of Notice*

Not more than 1 year

At least 1 week

More than 1 year but not more than 3 years

At least 2 weeks

More than 3 years but not more than 5 years

At least 3 weeks

More than 5 years

At least 4 weeks

*The period of notice is increased by one week if the employee is over 45 years of age and has completed at least 2 years continuous service with the employer.

Modern Award Commencement

- Modern Awards (MA_s) are those awards created under the national workplace relations system which relate to specific industries or occupations.
- Modern Awards came into effect for constitutional corporations and employees in Victoria, ACT and NT, from January 1st 2010.
- For employees of employers in the national system due to state referral legislation, MA_s commenced from the first full pay period on or after February 1st 2011.

MA Coverage and Application

- National System Employer
- Applicable industry/sector coverage of the MA
- Employee classifications covered in the Schedules of the MA
- No Enterprise Agreement in place or
- No FWA Workplace determination in place

Social, Community, Home Care and Disability Services Industry Award 2010

Covers and has application to one or more of employers employees.

Modern Award Coverage

Social, Community, Home Care and Disability Services Industry Award 2010

This industry award covers national employers throughout Australia in the:

- (a)** crisis assistance and supported housing sector;
- (b)** social and community services sector;
- (c)** home care sector;
- (d)** family day care scheme sector.

and their employees in the classifications listed in Schedule B to Schedule E

Modern Award Doesn't Cover

The award does not cover employers and employees covered by any of the following awards:

- **(a)** *Aged Care Award 2010;*
- **(b)** *Amusement, Events and Recreation Award 2010;*
- **(c)** *Fitness Industry Award 2010;*
- **(d)** *Health Professionals and Support Services Award 2010;*
- **(e)** *Nurses Award 2010.*

Transitional Instruments

- NAPSA (Notional Agreement Preserving State Award)
- 2B state award
- Pre-reform Federal award

What Conditions Apply Now?

- The conditions of employment that are contained in the **Social, Community, Home Care and Disability Services Industry Award 2010** apply to employees of national system employers currently. (covered by that award)
- **Loadings** (casual, shift), **penalty rates** (but not overtime rates) do not commence transitioning until Feb 1st 2012. The loadings and penalty rates from your transitional instrument apply currently.

What Minimum Wages Apply Now?

- Wage rates from the MA do not apply at present.
- Pay scale rates (derived from transitioning instruments) as at October 1st 2008 are used for the basis of determining minimum wage rates for each classification

Current Calculation (from first full pay period July 1st 2011)

- Pay scales (hourly amounts) multiplied by 38 (full time weekly amounts) plus \$26 per week (wage decision July 1st 2010) plus 3.4% (wage decision July 1st 2011) = minimum wage rate obligations until Feb 1st 2012. (\$ per hour ÷ 38)

Minimums

- Awards form minimum rates and conditions
- Employers can pay more than the award (transitional) minimum rate but cannot pay less
- Employers can offer better or increased award conditions but cannot “contract out” of any award provisions without a registered agreement

Loadings and Penalty Rates

Prior to the first full pay period on or after 1 February 2012 the employer must pay no less than the loading or penalty in the relevant transitional minimum wage instrument or award-based transitional instrument for the classification concerned.

- Casual or part-time loading;
- Saturday, Sunday, public holiday, evening or other penalty;
- Shift allowance/penalty.

Transitioning Loadings and Penalty Rates

- Where the existing [transitional instrument(TI)] penalty is higher than the MA penalty, from the following dates the employer must pay no less than the loading or penalty in the award (MA) plus the specified proportion of the transitional percentage:

First full pay period on or after

- 1st February 2012 60%
- 1st July 2012 40%
- 1st July 2013 20%

Example-TI penalty **higher** than MA

- Transitional Instrument (NAPSA) penalty is 175%
- Modern Award penalty is 150%
- Prior to **Feb 1st 2012** penalty is **175%**
- GAP of 25% to transition down from Feb 1st
- Penalty from **Feb 1st 2012** is:
150% plus (60% of 25%) $150\% + 15\% = \mathbf{165\%}$
- Penalty from **July 1st 2012** is:
150% plus (40% of 25%) $150\% + 10\% = \mathbf{160\%}$
- Penalty from **July 1st 2013** is: **155%**
- Penalty from **July 1st 2014** is: **150%** (MA penalty)

Example-TI penalty **lower** than MA

- Transitional Award (NAPSA) penalty is 150%
- Modern Award penalty is 200%
- Prior to **Feb 1st 2012** penalty is **150%**
- GAP of 50% to transition up from Feb 1st
- Penalty from **Feb 1st 2012** is:

200% **minus** (60% of 50%) $200\% - 30\% = \mathbf{170\%}$

Penalty from **July 1st 2012** is:

200% **minus** (40% of 50%) $200\% - 20\% = \mathbf{180\%}$

Penalty from **July 1st 2013** is: **190%**

Penalty from **July 1st 2014** is: **200% (MA penalty)**

Example-**No** Existing TI penalty

- Transitional instrument (NAPSA) no penalty
- Modern Award penalty is 150% (50% on base)
- Penalty **prior to Feb 1st 2012 is no penalty**

Penalty to transition up from Feb 1st

- Penalty from **Feb 1st 2012** is 40%: **120%**
- Penalty from **July 1st 2012** is 60%: **130%**
- Penalty from **July 1st 2013** is 80%: **140%**
- Penalty from **July 1st 2014** is: **150%**

Employees of 2B Award Employers

- Non constitutional corporations covered by 2B State Award prior to January 1st 2011
- Terms of 2B State Awards continued to apply until 1st Feb 2011
- From 1st Feb 2011 pay and conditions are the same as if the employer were a national system employer prior to January 1st 2010
- However –where the 2B was lower than MA (as at Feb 1 2011) then no obligation to pay more than the MA.

Award Finder

- <http://awardfinder.fwo.gov.au/default.aspx>
- Search for pre-Modern Award;
NAPSA or 2B award
- Applicable MA Coverage
- Pay and conditions guide which identifies transitional wage rates by classification

Pay Equity Application Background

- May 2009 Queensland IRC awarded wage increases of 18%-37% to SACS workers based on pay equity grounds. (**QSU v QCCI and Others [2009]**)
- November 2009 ASU sought FWA to suspend award modernisation for the nations 200,000 SACS workers to wait for the pay equity claim decision
- March 2010 ASU & consortium of unions backed by the Federal Government and the ACTU, launched an application for an equal remuneration order.
- Claim based on private sector SACS employees earning less than the public sector. Seeking an average wage increase of 25%

The Pay Equity Grounds

- The application makes the core argument that work performed by the sector's predominantly female workforce is undervalued given the difficulty and skill involved and its importance to the community and that workers have generally not had the opportunity to bargain collectively.

Funding Pay Equity

- The Federal Government is committed to "working through the funding implications of any increase awarded by FWA with the SACS sector, the unions and state and territory governments".

However the federal Government has also stated-

- “Any increase awarded in the SACS case would have to be funded by cutting other programs” and called for FWA to “find the right balance” between equal remuneration for community sector workers and “the broader implications of any wage increase.”

Pay Equity Application Issues

- The new conservative government in NSW has in the final stage of the SACS equal remuneration case reversed the previous Labor Government's broad support for the unions' application, arguing it is flawed and must fail.
- The tribunal must be satisfied on the evidence that there is an absence of equal remuneration, which requires a comparison of the value of work performed by female and male workers.

FWA Findings May 2011

- Fair Work Australia full bench determined SACS employees are receiving less pay than public sector workers performing similar duties and that the disparity is partly gender-driven
- The bench said the next step involved identifying "the extent to which gender has inhibited wages growth in the SACS industry and to mould a remedy which addresses the situation".
- While the full bench had reached preliminary conclusions about shaping such orders, it wanted to give the parties in the case the chance to make submissions on the matter.

Fair Work Australia

Conclusions to Date

- SACS industry is predominately female
- Not necessary to establish discrimination involved in setting remuneration rates
- A male comparator group is not required
- Application only needs to demonstrate that there is not equal pay for work of equal or comparable value

Undervalued

- “Because caring work in this context has a female characterisation, to the extent that work in the industry is undervalued because it is caring work, the undervaluation is gender-based”
- “It is important to note that the employers and other parties had agreed that undervaluation existed”

The Decision

- Was scheduled for early August 2011
- Postponed for a further 6 weeks to allow further consultation and submissions
- Full Bench hearing is listed for October 24th to 26th 2011

Social, Community, Home Care and Disability Services Industry Award 2010

Allowances

- Clothing and Equipment- supply uniforms or pay allowance including laundering- supply or reimbursement of safety equipment
- Meal- paid in overtime circumstances
- First Aid -Where required by the employer
- Travel-Reimbursement of agreed costs –
.74 cents km for use of employees vehicle
- Telephone- call costs
- Heat- working in plus 46 degrees

Allowances Continued

- Board and Lodging-pay reductions where the employer provides board and lodging
- On Call-employees available for recall to duty
- District –NT and WA-phased out 31-Dec-2014
- Accident Pay-Preserving accident pay entitlement under a transitional instrument - phased out 31-Dec-2014

Ordinary Hours of Work

- Avg. 38 week
- 5 days (5 shifts)
- 76 hrs. fortnight (10 shifts)
- 152 hrs. month (19 shifts)
- 8 hrs. max per shift unless agreed (extend to 10)
- Avg. 2 days off per week (consecutive)
- 6am -8pm Mon-Sun
- Rosters posted fortnightly
- 7 days' notice of change unless mutually agreed

Shift Work

- Afternoon

Finishes after 8pm and at or before midnight
=12.5% loading

- Night

Finishes after midnight or commences before 6am
=15% loading

SACS MA Conditions

- Saturday time and half (1 ½)
- Sunday double time (2)
- Public Holiday double time and half (2 ½)

- Meal Break 30-60 minutes unpaid
- Tea Break 10 minutes each 4 hour period
- Additional week Annual leave-shifts inclusive of 10 or more weekends

SACS MA Overtime

- Social, Community and Crisis centre
- Time and half ($1 \frac{1}{2}$) first three, then double
- Sunday -Double time (2)
- Public Holiday -Double time and half ($2 \frac{1}{2}$)
- Time off in Lieu (TOIL)-Time for Time
Employee request -taken in 3 month
time period or overtime paid

Questions?



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