

## Awards and Agreements under the Fair Work Act

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Historically, the Industrial Relations system in Australia comprised a number of jurisdictions across State and Territory boundaries alongside a Federal system. Today, the IR system has been simplified and is now predominantly a national system, whereby the *Fair Work Act 2009* provides the legislative framework including the National Employment Standards (NES) which underpin modern awards. An exception is Western Australia where some community organisations may still be covered by the WA IR system.

While we now have a more simplified and streamlined IR system, complexities regarding the *Social, Community, Home Care and Disability Services Industry Award* continue as a result of ongoing review as well as the Equal Remuneration Order (ERO). The ERO means that the transition from pre-modern awards to the SACS and Crisis Accommodation Employee classifications regarding base rates of pay will continue until December 2020.

### Federal or State system?

In 2009, the States that still had their own Industrial Relations system (NSW, QLD, Tasmania and SA) referred their Industrial Relations powers to the Commonwealth. This means that organisations in the not-for-profit community sector in all States (except some in WA) are in the Federal IR system. As **Western Australia** has retained their own system, some employers in WA could be governed by either the State or the Federal system. It is important to be aware of the differences between the two and how to determine which system you fall under. For example, different awards, rates of pay, or rules governing unfair dismissal may differ.

The division in WA between the State and Federal system depends upon whether or not you are a **constitutional trading corporation**. For Western Australian employers, the WA State industrial relations system continues to exist and covers employers who are not constitutional trading corporations.

If you are in WA and you do not know whether or not your organisation is a constitutional trading corporation, get a copy of our Guide "*What is a Constitutional Corporation?*" (available from our website) or talk to your IR Adviser at Jobs Australia. Most Jobs Australia members in WA are constitutional corporations and covered by the national system, but there can be exceptions.

### Which Modern Award?

Apart from a few occupationally based awards, most modern awards are industry specific. However, sometimes it is difficult to determine what industry your workplace or certain employees fall into. One of the advantages with modern awards is that they are mostly set out in a similar manner.

To determine which modern award applies follow these simple steps:

- carefully read the coverage clause which can usually be found in Part 1 of any given award;
- check the definitions and interpretation clause (also part 1) to clarify some of the terms used to define both coverage, characteristics of the industry and types of workers/employment; and
- check the classifications to see whether employees fit into these. Classifications are found as a schedule towards the end of the award.

In most cases, this process should be fairly straightforward. However, this is not always the case. If you require assistance to determine the correct award, do not hesitate to consult with your Jobs Australia Industrial Relations Adviser. It is important to get it right from the outset rather than be faced with any litigation or disputation down the track. For more information regarding which modern award applies please see our awards and pay tables section of the Jobs Australia/CSIR website.

### **What rates of pay apply?**

From the commencement of modern awards in January 2010, most modern awards contained transitional provisions which were designed to gradually phase differences in rates of pay, loadings and penalty rates from the pre-modern award to the modern award.

Since 1 July 2014 most of the rates of pay, loadings and penalty rates in modern awards have applied in full.

The main exception to this in the not-for-profit community sector is the *Social, Community, Home Care and Disability Services Award*. This award is subject to an Equal Remuneration Order (ERO) arising from the SACS Equal Pay Case. In practice this means that the phasing in arrangements for social and community services (SACS) employees and crisis accommodation employees continues until 2020. Wage increases are added to the higher of either the pre-modern award classification rates or the equivalent modern award rates. The first phase of increases under the ERO came into effect from the first full pay period on or after 1 December 2012. This will continue each December with the final instalment due in 2020. Federal minimum wage increases also apply each July.

To ensure that you are paying the correct rate of pay for SACS and crisis accommodation employees under the SCHCADS award, you need to take the following steps in relation to each job:

- Find out what award would have applied to the job prior to the commencement of modern awards.
- Next, ensure that you know the correct classification for the job under the old award.
- Determine the modern award that applies along with the correct classification.
- Go to the Jobs Australia website and download the appropriate pay table.

Therefore, in order to determine the legally enforceable minimum wage, it is important to determine the correct classification under both the pre-modern and modern award. Jobs Australia publishes over 25 pay tables that transition to the SCHCADS award. These are available on our

website and cover most of the likely transitions from pre-modern awards. Please contact us if you are unable to find the pay table that you are looking for. In some cases there may be more than one option to choose from. *The rates of pay under Clause 15 of the SCHCADS award do **not** apply, because of the operation of the ERO.*

In the event that the pay table you are looking for is not available from Jobs Australia, go to the website of the Fair Work Ombudsman ([www.fairwork.gov.au](http://www.fairwork.gov.au)) and download a “Pay Guide” from the Award Finder section of the website.

The table below is a summary regarding award coverage. For more specific information regarding which modern award applies please see our awards and pay tables section of the Jobs Australia/CSIR website.

Type of Award as at 31 December 2009	Does the Modern Award apply?	Rates of Pay (See our publication <i>Guide to Pay Increases</i> for more detailed information)
<ul style="list-style-type: none"> <li>• State Award (other than WA)</li> <li>• Notional Agreement Preserving State Awards (NAPSAs)</li> <li>• Federal (Pre-reform) Awards</li> <li>• Transitional Awards (all States except WA)</li> </ul>	Yes. National Employment Standards, including Fair Work Information Statement and flexibility requests apply on the basis of no detriment.	Rates of pay are adjusted as a result of annual wage reviews conducted by the Fair Work Commission from July each year. Allowances set out in the modern award apply as a percentage of the Standard Rate (see definitions in the modern award) or are adjusted in line with CPI movements. The transition of classifications and pay rates from pre-modern awards to SACS and Crisis Accommodation employees under the SCHCADS award continues until December 2020 due to the Equal Remuneration Order (ERO). Different arrangements apply for pay rates for 2 Transitional Pay Equity Orders in Queensland – see below*
State Award in WA	No, state awards continue to apply.	Rates of pay as determined by the WA Industrial Relations system.
Transitional Awards in WA	No, state awards now apply. Since terminating on 27 March 2011, those who were covered by Transitional awards in WA are now	Rates of pay as determined by the WA Industrial Relations system.

	covered by State Awards. Check with the WAIRC to find the applicable award.	
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\* Two Queensland state awards, the *Queensland Community Services & Crisis Assistance Award* and the *Disability Support Workers Award* are subject to transitional pay equity orders, and those pay rates are preserved. However, the modern award applies for all other conditions.

### What about Agreements?

The table below illustrates the interaction between National Employment Standards, Modern Awards and Agreements:

From 1 January 2010	Workchoices EBA or AWA	Pre-Reform (March 2006) EBA or AWA	Preserved State Agreements
Agreement	Continues until replaced or terminated	Continues until replaced or terminated	Continues until replaced or terminated
NES	Applies on the basis of no detriment	Applies on the basis of no detriment	Applies on the basis of no detriment
Modern Award (Conditions)	Does not apply	Applies but agreement prevails to the extent of inconsistency	Does not apply but may be basis of safety net for next agreement
Base rates of pay under the applicable modern award	Prevail if greater than the agreement	Prevail if greater than the agreement	Do not apply