



Fair Work (Transitional Provisions and Consequential Amendments) Amendment Regulation 2012 (No. 2)¹

Select Legislative Instrument 2012 No. 270

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

Dated 22 November 2012

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

WILLIAM RICHARD SHORTEN
Minister for Employment and Workplace Relations

1 Name of regulation

This regulation is the *Fair Work (Transitional Provisions and Consequential Amendments) Amendment Regulation 2012 (No. 2)*.

2 Commencement

This regulation commences on 1 December 2012.

3 Amendment of *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009*

Schedule 1 amends the *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009*.

Schedule 1 Amendments

(section 3)

[1] Regulation 3.03D

substitute

3.03D Modification of Schedule 3 to Act—base rate of pay

For subitem 8 (1) of Schedule 2 to the Act, item 43 of Schedule 3 to the Act is modified by omitting subitem 43 (5) and inserting:

-
- (5) If the transitional pay equity order applies to an employer, the employer is required to pay to each affected employee of the employer a base rate of pay, in respect of a period, that is not less than the base rate of pay that the employee would have been entitled to be paid under the *Queensland Community Services and Crisis Assistance Award—State 2008* as in effect at 1 September 2011 in respect of that period, assuming that the base rate of pay had continued to be determined in whole or part by, or in accordance with, the source pay equity order in respect of that period.

Note The base rate of pay includes any amount required to be paid under the general ruling made by the Queensland Industrial Relations Commission on 31 August 2011 in the matters of *Queensland Council of Unions AND Local Government Association of Queensland Ltd and Others* (B/2011/17) and *The Australian Workers' Union of Employees, Queensland AND Local Government Association of Queensland Ltd and Others* (B/2011/19).

[2] After regulation 3.03G

insert

3.03H Modification of Act—variation of transitional pay equity order

For subitem 8 (1) of Schedule 2 to the Act, Schedule 3 to the Act is modified by inserting the following after item 43:

'44 Variation of transitional pay equity order

- (1) On 1 December 2012, FWA is taken to vary the transitional pay equity order taken to have been made under subitem 43 (1) on 27 March 2011.

-
- (2) The transitional pay equity order, as varied (the ***varied transitional pay equity order***), requires the prescribed class of employers mentioned in regulation 3.03B of the *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009* to pay to each affected employee, in accordance with subitem (3), a base rate of pay that is not less than the base rate of pay that the employee would be entitled to be paid if:
- (a) the *Queensland Community Services and Crisis Assistance Award—State 2008* (the ***source award***), as in effect at 1 December 2012, applied to the employee; and
 - (b) the base rate of pay payable under the source award after 1 December 2012 continued to be determined in accordance with the source pay equity order.

Note 1 The source pay equity order is the order made by the Queensland Industrial Relations Commission on 12 June 2009 in the matter of *Queensland Services, Industrial Union of Employees AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others* (A/2008/5).

Note 2 The base rate of pay includes any amount required to be paid under the general ruling made by the Queensland Industrial Relations Commission on 16 August 2012 in the matters of *Queensland Council of Unions AND Local Government Association of Queensland Ltd and Others* (B/2012/14) and *The Australian Workers' Union of Employees, Queensland AND Local Government Association of Queensland Ltd and Others* (B/2012/15).

- (3) The varied transitional pay equity order takes effect, in relation to the employee, on the first day of the first pay period that starts on or after 1 December 2012.
- (4) Schedule 1A to the *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009* sets out the base rates of pay payable under the varied transitional pay equity order.

45 Variation of modern award minimum wage applicable to varied transitional pay equity order

- (1) If FWA varies minimum wages in the *Social, Community, Home Care and Disability Services Industry Award 2010* (the *SACS modern award*) as part of an annual wage review for the financial years starting on 1 July 2012 and ending on 30 June 2020, the variation applies to the base rate payable under the varied transitional pay equity order as if the varied transitional pay equity order were the relevant modern award.

Note See sections 285 and 286 of the FW Act.

- (2) However, any variation to the SACS modern award made as part of the annual wage review for the financial year starting on 1 July 2019 is applicable to the varied transitional pay equity order only to the extent that the increase does not result in the varied transitional pay equity order exceeding the final rate set out in clause 6.2 of the equal remuneration order made by FWA on 22 June 2012 under section 302 of the FW Act.’

[3] Before regulation 3A.01

insert

3A.01A Modification of Act—relevant instrument

For subitem 8 (1) of Schedule 2 to the Act, Schedule 3A to the Act is modified by substituting the following for subitems 30A (6) and (7):

- ‘(6) A term of a modern award, enterprise agreement or order of FWA (a *relevant instrument*) is of no effect to the extent that:
- (a) an employee is entitled to be paid by an employer a base rate of pay under the transitional pay equity order in respect of a particular period; and
 - (b) the term of the relevant instrument requires the employer to pay a base rate of pay, in respect of that period, that is less than the base rate of pay mentioned in paragraph (a).

- (7) However, to avoid doubt, a term of a relevant instrument continues to have effect to the extent that it requires an employer to pay a base rate of pay, in respect of a period, that is equal to or more than the base rate of pay mentioned in paragraph (6)(a).’

3A.01B Modification of Act—variation of transitional pay equity order

For subitem 8 (1) of Schedule 2 to the Act, Schedule 3A to the Act is modified by inserting the following after item 30A:

‘30B Variation of transitional pay equity order

- (1) This item applies to the transitional pay equity order taken to have been made under item 30A to the extent that the order relates to the Division 2B State award derived from the source award known as the *Queensland Community Services and Crisis Assistance Award—State 2008*.
- (2) On 1 December 2012, FWA is taken to vary the transitional pay equity order in relation to each affected employee of the employer.
- (3) The transitional pay equity order, as varied (the *varied transitional pay equity order*), requires the employer to pay to each affected employee, in accordance with subitem (4), a base rate of pay that is not less than the base rate of pay that the employee would be entitled to be paid if:
- (a) the source award, as in effect at 1 December 2012, applied to the employee; and
- (b) the base rate of pay payable under the source award after 1 December 2012 continued to be determined in accordance with the source pay equity order.

Note 1 The source pay equity order is the order made by the Queensland Industrial Relations Commission on 12 June 2009 in the matter of *Queensland Services, Industrial Union of Employees AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (A/2008/5)*.

Note 2 The base rate of pay includes any amount required to be paid under the general ruling made by the Queensland Industrial Relations Commission on 16 August 2012 in the matters of *Queensland Council of Unions AND Local Government Association of Queensland Ltd and Others* (B/2012/14) and *The Australian Workers' Union of Employees, Queensland AND Local Government Association of Queensland Ltd and Others* (B/2012/15).

- (4) The varied transitional pay equity order takes effect, in relation to the employee, on the first day of the first pay period that starts on or after 1 December 2012.
- (5) Schedule 1A to the *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009* sets out the base rates of pay payable under the varied transitional pay equity order.

30C Variation of modern award minimum wage applicable to varied transitional pay equity order

- (1) If FWA varies minimum wages in the *Social, Community, Home Care and Disability Services Industry Award 2010* (the **SACS modern award**) as part of an annual wage review for the financial years starting on 1 July 2012 and ending on 30 June 2020, the variation applies to the base rate payable under the varied transitional pay equity order as if the varied transitional pay equity order were the relevant modern award.

Note See sections 285 and 286 of the FW Act.

- (2) However, any variation to the SACS modern award made as part of the annual wage review for the financial year starting on 1 July 2019 is applicable to the varied transitional pay equity order only to the extent that the increase does not result in the varied transitional pay equity order exceeding the final rate set out in clause 6.2 of the equal remuneration order made by FWA on 22 June 2012 under section 302 of the FW Act.

30D FWA may vary transitional pay equity orders

- (1) In an annual wage review, FWA may make a determination varying the transitional pay equity order that is taken to have been made under subitem 30A (1).

- (2) Division 3 of Part 2-6 of the FW Act (other than section 292) applies to the transitional pay equity order as if the transitional pay equity order were a modern award.
- (3) This item does not apply to the transitional pay equity order to the extent that the order relates to the Division 2B State award derived from the source award known as the *Queensland Community Services and Crisis Assistance Award—State 2008*.
Note See subitem 30B (1).’.

[4] Schedule 1A*substitute***Schedule 1A Varied transitional pay equity orders—rates of pay**

(regulations 3.03H and 3A.01A)

Classification	Base rate payable on 1 December 2012
<i>Community services worker—weekly (\$)</i>	
<i>Level 1</i>	
Paypoint 1	775.59
Paypoint 2	807.31
Paypoint 3	839.30
<i>Level 2</i>	
Paypoint 1	839.30
Paypoint 2	870.17
Paypoint 3	902.35
Paypoint 4	934.20
<i>Level 3</i>	
Paypoint 1	934.20
Paypoint 2	976.92
Paypoint 3	997.69
Paypoint 4	1 029.41
<i>Level 4</i>	
Paypoint 1	1 093.89
Paypoint 2	1 114.65
Paypoint 3	1 157.13
Paypoint 4	1 189.21

Classification	Base rate payable on 1 December 2012	
<i>Level 5</i>		
Paypoint 1	1 251.60	
Paypoint 2	1 284.15	
Paypoint 3	1 315.73	
<i>Level 6</i>		
Paypoint 1	1 376.78	
Paypoint 2	1 397.45	
Paypoint 3	1 418.38	
<i>Level 7</i>		
Paypoint 1	1 482.31	
Paypoint 2	1 513.79	
Paypoint 3	1 545.35	
<i>Level 8</i>		
Paypoint 1	1 609.79	
Paypoint 2	1 640.68	
Paypoint 3	1 673.17	
<i>Crisis accommodation worker Category A—weekly (\$)</i>		
<i>Level 1</i>		
Paypoint 1	934.20	
Paypoint 2	976.92	
Paypoint 3	997.69	
Paypoint 4	1 029.41	
<i>Level 2</i>		
Paypoint 1	1 093.89	
Paypoint 2	1 114.65	
Paypoint 3	1 157.13	
Paypoint 4	1 189.21	
<i>Level 3</i>		
Paypoint 1	1 251.60	
10	<i>Fair Work (Transitional Provisions and Consequential Amendments) Amendment Regulation 2012 (No. 2)</i>	2012, 270

Classification	Base rate payable on 1 December 2012
Paypoint 2	1 284.15
Paypoint 3	1 315.73
Level 4	
Paypoint 1	1 376.78
Paypoint 2	1 397.45
Paypoint 3	1 418.38
Crisis accommodaton worker Category B—weekly (\$)	
Level 1	
Paypoint 1	1 014.58
Paypoint 2	1 061.07
Paypoint 3	1 083.73
Paypoint 4	1 118.29
Level 2	
Paypoint 1	1 188.42
Paypoint 2	1 211.08
Paypoint 3	1 257.34
Paypoint 4	1 292.27
Level 3	
Paypoint 1	1 361.15
Paypoint 2	1 395.73
Paypoint 3	1 430.10

Note 1 Weekly wage rates were calculated by dividing the annual salary by 52.1667. Hourly rates are calculated by dividing the weekly wage rate by 38.

Note 2 The base rates for Community service worker, levels 6, 7 and 8, and Crisis accommodation worker Category A, level 4, do not include the 7.5% loading mentioned in clause 3.1.3 of Schedules 1 and 2 to the *Queensland Community Services and Crisis Assistance Award—State 2008*.

Note 3 The base rates payable on 1 December 2012 include the annual Equal Remuneration Component (ERC) increases of 1% for 2010–2012, as derived from the source pay equity order.

Note 4 The base rates payable under the varied transitional pay equity orders after 1 December 2012 can be determined by calculating and adding the following, in the following order:

- (a) ERC increases of 1% for 2013–2015;
- (b) any increases to the *Social, Community, Home Care and Disability Services Industry Award 2010* as part of an annual wage review determined by FWA under paragraph 285 (2) (b) of the FW Act.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.comlaw.gov.au.