

**Senate Standing Committee on Education Employment and Workplace
Relations**

**QUESTIONS ON NOTICE
Additional Estimates 2009-2010**

Agency - Fair Work Ombudsman

DEEWR Question No.EW0956_10

Senator Fisher asked on 10/02/2010, Hansard page 41.

Question

FWO - CLEANING SERVICES AWARD 2010

Senator FISHER—...If the Fair Work Ombudsman decided that a particular employer seeking guidance was subject to this Cleaning Services Award 2010, and as of today that employer were attempting to ascertain what rates of pay it should be paying its workers in order to comply with the award—both today and then to plan for the next iteration, 1 July, of the transitional provisions—and therefore was asking you some questions, can I take you to what I referred to clause B1.1 of schedule B, the transitional provisions, at the top of page 42. That says: The following transitional arrangements apply to an employer which, immediately prior to 1 January 2010 (a) was obliged; (b) but for the operation of an agreement-based transitional instrument would have been obliged; or (c) if it had been an employer in the industry or of the occupations covered by this award would have been obliged by a transitional minimum wage instrument and/or an award-based transitional instrument to pay a minimum wage lower than that in this award for any classification of employee. What would you be saying to the employer calling your help line for guidance what that clause means? Mr Wilson—I think we will take that on notice. We would have scripts which relate to particular awards and particular clauses. Given that you are asking a fairly specific question, I would prefer to take that on notice and come back to you.

Answer

The Fair Work Ombudsman has provided the following response:

The clause is part of broader coverage provisions describing to whom specific transitional provisions in the Cleaning Services Award 2010 apply. The provisions enable employers to phase in some increases in wages compared with those that they were obliged, or would have been obliged, to pay immediately prior to 1 January 2010. The clause provides that certain specified transitional arrangements apply to an employer who was obliged, or would have been obliged, to pay a minimum wage that was lower than that specified in this award.

The Cleaning Services Award 2010 contains unique transitional provisions.

Protection for employees

Schedule A of the award preserves an existing employee's entitlement to a rate of pay which is higher than the modern award equivalent. These rates of pay are known as 'saved rates'.

Protection for employers

The provisions also enable employers to phase in some increases in wages compared with those that they were obliged, or would have been obliged, to pay immediately prior to 1 January 2010. These phased rates are provided as flat dollar amounts in Schedule B.

Clause B.1.1 is part of broader coverage provisions describing who the rates in Schedule B apply to. In order to determine whether the transitional rates in Schedule B apply to particular employer information is needed, such as:

- The date the business started employing staff in the industry
- Details of how the business is registered
- The classification level of the employee in question
- Details of the shift being worked

Fair Work Infoline advisors would then ask a series of questions to determine the state where the employer employs their employees, the instrument that covered the business prior to 1 January 2010 and the duties of the employees before proceeding to identify their current rate of pay.