

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

**QUESTIONS ON NOTICE
Budget Estimates 2010-2011**

Outcome 5 - Workplace Relations

DEEWR Question No.EW0209_11

Question

TAKE HOME PAY

Senator Abetz asked on 31/05/2010, Hansard page 112.

CHAIR—Senator Fisher, you would be the last to want to criticise that, I think. Ms Paul—I think we have already taken this question on notice, and I think I said I wanted us to take away how the clauses interacted with each other in terms of a new employee. I can see that we are about to get into all different scenarios which are hard to explain because they keep shifting, so I am happy to take it away and work it through. CHAIR—Can we use an example of a real situation where there is a modern award that has a different award rate to the existing award and work through that in a real way, so we can see how that operates? Ms Paul—That is what we will probably take away. Senator ABETZ—The very first example I used was transport workers in New South Wales. We can go back there if you like. CHAIR—We were just pulling rates of pay out of the air. I think it is good to take that real example and work through it. Mr Kovacic—We will take the question on notice and respond to it using the road transport industry in New South Wales as the example against which we frame our response. Senator ABETZ—I will not be holding my breath in relation to that. What about the waste contractors? Ms Paul—What about the waste contractors?

Answer

Transitional provisions are designed to ensure a smooth transition for employers and employees as they move from their existing industrial arrangements to the relevant modern award. As part of the award modernisation process the Australian Industrial Relations Commission (AIRC) included transitional provisions in modern awards. The provisions enable differences in pay and pay-related provisions to be gradually phased up or down over a five year period in order for employers and employees to gradually move to the modern award standard. Phasing will occur in five equal instalments, one each year, commencing on 1 July 2010. Parties have been able to apply to alter the model transitional provisions if their circumstances warrant.

The example provided at [Attachment A](#) and outlined below shows how the transitional provisions will operate from 1 July 2010 with respect to:

- employers and employees previously covered by the Transport Industry (State) Award – NSW (NSW NAPSA), the notional agreement preserving state award (NAPSA), formerly applying to the transport industry in NSW; and
- the Road Transport and Distribution Award 2010 (Transport modern award), the relevant modern award.

This is an example of where rates of pay in the modern award are below the relevant rates in the NAPSA. Take-home pay orders are available to ensure that employees do not receive a reduction in their take-home pay as a consequence of the award modernisation process.

Considerations

In developing this specific example, it is important to note the following special considerations:

1. The AIRC, in its Statement of 23 January 2009 which released the exposure draft of the Transport modern award, indicated that the rates of pay in the NSW NAPSA are considerably higher than other transport industry awards and for that reason were not reproduced in the exposure draft of the Transport modern award. The AIRC further noted that many of the industrial instruments under consideration reflected very similar rates, if not identical rates of pay. (See paragraph 102 of decision [2009] AIRCFB 50.)
2. On 3 April 2010 the AIRC handed down the final Transport modern award. At that time the AIRC confirmed that following consideration of submissions by the parties and relevant decisions of the NSW Industrial Relations Commission, it was clear to the AIRC that the wage increases granted by those decisions to the rates in the NSW NAPSA were considered as special cases. The AIRC stated that the Act “makes it clear that wage rates in a modern award must be minimum rates and can be included only to the extent that they provide a fair minimum safety net.” (See paragraphs 173 and 174 of decision [2009] AIRCFB 345.)
3. The example provided in this response does not take into account any allowances or shift penalties that employees may be entitled to under the NSW NAPSA or Transport modern award.
4. The rates of pay in the Transport modern award are based on the Transport Workers Award 1998, an industry federal award with significant coverage across Australia. As noted in point 1 above, these rates also reflect similar if not identical rates of pay in other NAPSAs.
5. The example applies transitional arrangements calculation methodology as detailed in the Fair Work Ombudsman’s (FWO) guide to ‘Transitional arrangement in modern awards’, released on 31 May 2010.

Example – NSW Transport industry

Step 1 Identify the difference (transitional amount) between the pre-modern Award (NSW NAPSA) and the modern award (Transport modern award) wage rates for the equivalent classification. The table at [Attachment A](#) shows for example that:

- Employees at the Grade 5 classification in the NSW NAPSA receive a weekly wage rate of **\$687.90** (Column 1). This rate of pay applied until 1 July 2010 when the transitional arrangements commenced
- Under the Transport modern award, employees at the equivalent

classification receive **\$645.70** per week (Column 2).

- Therefore, the transitional amount is **\$42.20** (Column 3) ($\687.90 [NSW NAPSA] – $\$645.70$ [Transport modern award] = $\$42.20$).

Note, the linkages of NSW NAPSA classifications to the Transport modern award, as shown in Attachment A, do not demonstrate all possible combinations. For example, Grade 1 in the NSW NAPSA generally links to Grade 1 in the Transport modern award. However Grade 1 in the NSW NAPSA also links to Grade 2 in the Transport modern award, where the relevant employee is responsible for driving a motor bike.

Step 2

Add any increase from Fair Work Australia's (FWA) annual wage review to the Transport modern award wage rate.

- In 2010/11 the increase is \$26.00.
- Therefore, the Transport modern award rate is $\$645.70 + \$26.00 =$ **\$671.70** (Column 4).

Step 3

Once the transitional amount and the Transport modern award wage rate (including the FWA wage increase) has been identified, a proportion of the transitional amount is then applied (in this case transitioning down) to the Transport modern award amount. In this example, rates are transitioning down from the NSW NAPSA to the Transport modern award.

- Therefore, on 1 July 2010, an employee would receive $\$671.70 +$ 80 per cent of the transitional amount ($\$42.20 \times 0.8 = \33.76) = **\$705.46** (Column 5).

Note, consistent with clause A.3.6 of Schedule A of the Transport modern award, as the modern award rate including the 2010 annual minimum wage increase of \$26.00 results in a weekly wage greater than the NSW NAPSA for Grade 1 – 4 classifications, no phasing is required for these classifications.

Transitional period from July 2011

The classifications for Grade 5 and above in Attachment A will require phasing over the remainder of the transition period to 2014. Note the proportion of the transitional amount reduces by 20% each year.

ATTACHMENT A

Operation of transitional provisions in the New South Wales transport industry

Column 1		Column 2		Column 3	Column 4	Column 5
Transport Industry (State) Award - NSW (NSW NAPSA)		Road Transport and Distribution Award 2010 (Transport modern award)		Transitional Amount (TA)	Transport modern award plus 1 July 2010 wage increase	Transport modern award plus 80% of TA
Classification	Wage (\$)	Classification	Wage (\$)	TA (\$)	\$26.00	1-Jul-10 (\$)
Grade 1*	621.8	1	603.6	18.2	629.6	N/A
Grade 2	638.9	2	618.9	20	644.9	N/A
Grade 3	650.8	3	626.6	24.2	652.6	N/A
Grade 4	661.2	4	638.1	23.1	664.1	N/A
Grade 5	687.9	5	645.7	42.2	671.7	705.46
Grade 6	694.6	6	653.4	41.2	679.4	712.36
Grade 7	714.9	7	663.1	51.8	689.1	730.54
Grade 8	751.4	8	682.1	69.3	708.1	763.54
Crane Grade C	773.4	9	693.6	79.8	719.6	783.44
Crane Grade D	789.7	10	710.7	79	736.7	799.9

* The linkages of NSW NAPSA classifications to the Transport modern award, as shown above do not demonstrate all possible combinations. For example, Grade 1 in the NSW NAPSA generally links to Grade 1 in the Transport modern award. However Grade 1 in the NSW NAPSA also links to Grade 2 in the Transport modern award, where the relevant employee is responsible for driving a motor bike.