

DIVISION 2B STATE AWARD EMPLOYERS TRANSITION TO MODERN AWARDS 2011

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Legislation concerning State referral of industrial relations powers to the Commonwealth made effective on 1 January 2010 meant that sole traders, partnerships and other unincorporated entities or non-constitutional corporations joined those employers who are constitutional corporations and became part of the national workplace relations system.

While employers who are constitutional corporations have been covered by modern awards since 1 January 2010, the legislation allowed employers and their employees who were covered by State awards (which became known as Division 2B State awards) to continue to apply the pay and conditions under these awards until 31 December 2010.

Fair Work Australia handed down its decision about the transition from Division 2B State awards into modern awards and extended the operation of Division 2B State awards until 31 January 2011 with the transitional provisions to apply from 1 February 2011.

Transitional Arrangements

From 1 February 2011, an employer who was covered by a Division 2B State award must comply with all the terms and conditions contained in the relevant modern award and any transitional arrangements that apply. There are transitional arrangements to phase-in the modern award classification rates, penalties and loadings in most modern awards. In general, the transitional provisions will ensure that former Division 2B State award employers and their employees will be subject to the same transitional rates as other employers and their employees in the national system.

In short, what this means is that from the first pay period on or after 1 February 2011, most sole traders, partnerships and other unincorporated entity employers in Queensland, New South Wales, South Australia and Tasmania will be covered by the terms and conditions in modern awards.

What do you need to do?

If you are currently employing under one or more of the Division 2B State awards, from 1 February 2011 you will need to:

- determine which modern award, or awards, cover your business. Most employers will be covered by an industry based modern award, but where your employee is not covered by the classification structure of an industry based modern award, the employee may be covered by a modern award with an occupational coverage
- ascertain if there are transitional arrangements applying under the modern award. Where the award does not include transitional arrangements, the full modern award rates will apply
- calculate the transitional rate of pay for each employee and compare these with the rates of pay from the Division 2B State award immediately prior to 1 February 2011 and the modern award rates as at 1 January 2011

Generally, the transitional rate will apply as the minimum rate of pay that can be paid, except in the following circumstances:

- if the wage rate in the Division 2B State award is higher than the rate in the modern award but the transitional rate is lower than the modern award rate, the modern award rate will be the minimum rate of pay not the lower phased rate of pay
- if the rate in the Division 2B State award is lower than the rate in the modern award and the transitional rate is higher than the modern award rate, the modern award rate will be the minimum rate of pay, not the higher phased rate of pay

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