



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

Select Legislative Instrument 2012 No. 3

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 9 February 2012

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

BILL 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. 1)*.

2 Commencement

This regulation commences on 1 March 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] After regulation 3.03

insert

3.03A Modification of Act — deemed date of transitional pay equity order

For subitem 8 (1) of Schedule 2 to the Act, Schedule 3 to the Act is modified by substituting subitem 43 (1) as follows:

- ‘(1) On 27 March 2011, FWA is taken to have made an order (the *transitional pay equity order*) under this item.’.

3.03B Transitional pay equity order taken to have been made by FWA — Division 2B State reference transitional awards (prescribed employers)

- (1) For paragraph 43 (2) (b) of Schedule 3 to the Act, the prescribed class of employers is the employers:
- (a) to whom the *Social, Community, Home Care and Disability Services Industry Award 2010* applies on or after 1 January 2010 in relation to affected employees; and

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- (b) to whom either of the following transitional awards applied immediately before 1 January 2010 in relation to affected employees:
 - (i) the *Social and Community Services (Queensland) Award 2001 [Transitional]*;
 - (ii) the *Crisis Assistance Supported Housing (Queensland) Award 1999 [Transitional]*; and
 - (c) who received supplementary funding from the Government of Queensland in relation to the prescribed source pay equity order mentioned in regulation 3.03C; and
 - (d) who were not constitutional corporations immediately before 1 January 2010.
- (2) However, the prescribed class of employers does not include an employer in relation to an affected employee if, immediately before 1 January 2010:
- (a) an enterprise agreement applied to the employer in relation to the affected employee; or
 - (b) a transitional agreement-based instrument of the following kinds applied to the employer in relation to the affected employee:
 - (i) a workplace agreement;
 - (ii) a workplace determination;
 - (iii) a preserved State agreement;
 - (iv) an AWA;
 - (v) a pre-reform AWA.

Note See subitem 28 (1) of Schedule 3 to the Act.

3.03C Prescribed source pay equity order

For paragraph 43 (4) (d) of Schedule 3 to the Act, the prescribed source pay equity order is the order made by the Queensland Industrial Relations Commission on 12 June 2009 amending the *Queensland Community Services and Crisis Assistance Award — State 2008*.

Note The prescribed source pay equity order gave effect to the decision of the Queensland Industrial Relations Commission in *Queensland Services, Industrial Union of Employees AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others* (A/2008/5) on 6 May 2009.

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

- (1) 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:
- (a) 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; and
 - (b) Schedule 1A to the *Fair Work (Transitional Provisions and Consequential Amendments Regulations 2009* specifies the amounts of the base rates of pay on and after times specified in the regulations.

Note The base rate of pay includes any amount required to be paid on and after 31 August 2011 in compliance with the general ruling made by the Queensland Industrial Relations Commission on that day in the following matters:

- (a) *Queensland Council of Unions AND Local Government Association of Queensland Ltd and Others* (B/2011/17);
- (b) *The Australian Workers’ Union of Employees, Queensland AND Local Government Association of Queensland Ltd and Others* (B/2011/19).’.

3.03E Modification of Schedule 3 to Act — when transitional pay equity order takes effect

For subitem 8 (1) of Schedule 2 to the Act, Schedule 3 to the Act is modified by substituting subitem 43 (7) as follows:

- ‘(7) The transitional pay equity order takes effect in relation to the employer on 27 March 2011.’.

3.03F Payment of back pay

For subitem 8 (1) of Schedule 2 to the Act, Schedule 3 to the Act is modified by inserting the following after subitem 43 (7):

- ‘(7A) An amount payable by the employer under subitem (7) in relation to the period (the **backpay period**):
- (a) commencing on 27 March 2011; and
 - (b) ending on 29 February 2012;
- is payable in accordance with subitem (7B).
- (7B) The employer must pay the difference between:
- (a) the amount paid to an affected employee during the backpay period; and
 - (b) the amount that the affected employee would have been entitled to receive in accordance with the transitional pay equity order during the backpay period;

in accordance with the following table.

Item	By ...	the employer must have paid at least ...
1	1 July 2012	35% of the total amount of the difference
2	1 July 2013	70% of the total amount of the difference
3	1 July 2014	the total amount of the difference

3.03G Modification of Schedule 3 to Act — relevant instrument

For subitem 8 (1) of Schedule 2 to the Act, Schedule 3 to the Act is modified by substituting the following for subitems 43 (8) and (9):

- ‘(8) 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 referred to in paragraph (a).
- (9) 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 referred to in paragraph (8)(a).’.

[2] After Part 4

insert

**Part 4AA Transitional provisions for
Schedule 16 to Act
(Compliance)**

**4AA.01 Modification of item 7A of Schedule 16 to Act —
prescribed employers**

For subitem 8 (1) of Schedule 2 to the Act, Schedule 16 to the Act is modified by inserting the following after subitem 7A (1):

- ‘(1A) However, if the person mentioned in subitem (1) is an employer prescribed in regulations made for paragraph 43 (2) (b) of Schedule 3, item 48A of the table in subitem 16 (1) of this Schedule only applies to the person on and after 1 March 2012.’.

[3] Before Schedule 1*insert*

**Schedule 1A Transitional pay equity order taken to have been made
by FWA — Division 2B State reference transitional
awards (rates of pay)**

(regulation 3.03D)

Classification	10/1/11	11/7/11	1/9/11	9/1/12	11/7/12	11/7/13	11/7/14	11/7/15
<i>Community services worker — weekly (\$)</i>								
<i>Level 1</i>								
Paypoint 1	714.57	721.72	746.26	746.26	753.73	761.26	768.88	776.56
Paypoint 2	743.81	751.25	776.79	776.79	784.56	792.40	800.33	808.33
Paypoint 3	773.29	781.02	807.57	807.57	815.65	823.80	832.04	840.36
<i>Level 2</i>								
Paypoint 1	773.29	781.02	807.57	807.57	815.65	823.80	832.04	840.36
Paypoint 2	801.74	809.75	837.28	837.28	845.65	854.11	862.65	871.28
Paypoint 3	825.66	839.69	868.24	868.24	876.92	885.69	894.55	903.50
Paypoint 4	847.30	869.33	898.89	898.89	907.87	916.95	926.12	935.38

Schedule 1 Amendments

Classification	10/1/11	11/7/11	1/9/11	9/1/12	11/7/12	11/7/13	11/7/14	11/7/15
Level 3								
Paypoint 1	847.30	869.33	898.89	898.89	907.87	916.95	926.12	935.38
Paypoint 2	871.19	909.09	939.99	939.99	949.39	958.89	968.48	978.16
Paypoint 3	895.11	928.41	959.97	959.97	969.57	979.27	989.06	988.95
Paypoint 4	919.05	957.93	990.50	990.50	1 000.40	1 010.41	1 020.51	1 030.72
Level 4								
Paypoint 1	980.66	1 017.93	1 052.54	1 052.54	1 063.06	1 073.69	1 084.43	1 095.28
Paypoint 2	1 005.58	1 037.25	1 072.52	1 072.52	1 083.24	1 094.08	1 105.02	1 116.07
Paypoint 3	1 030.41	1 076.78	1 113.39	1 113.39	1 124.52	1 135.77	1 147.13	1 158.60
Paypoint 4	1 052.93	1 106.63	1 144.25	1 144.25	1 155.69	1 167.25	1 178.92	1 190.71
Level 5								
Paypoint 1	1 118.82	1 164.69	1 204.29	1 204.29	1 216.33	1 228.49	1 240.78	1 253.19
Paypoint 2	1 142.20	1 194.98	1 235.61	1 235.61	1 247.96	1 260.44	1 273.05	1 285.78
Paypoint 3	1 168.06	1 224.36	1 265.99	1 265.99	1 278.65	1 291.44	1 304.35	1 317.40
Level 6								
Paypoint 1	1 214.03	1 281.17	1 324.73	1 324.73	1 337.98	1 351.36	1 364.87	1 378.52
Paypoint 2	1 240.37	1 300.41	1 344.62	1 344.62	1 358.07	1 371.65	1 385.37	1 399.22
8	Fair Work (Transitional Provisions and Consequential Amendments) Amendment Regulation 2012 (No. 1)							2012, 3

Classification	10/1/11	11/7/11	1/9/11	9/1/12	11/7/12	11/7/13	11/7/14	11/7/15
Paypoint 3	1 266.69	1 319.88	1 364.76	1 364.76	1 378.41	1 392.19	1 406.11	1 420.17
Level 7								
Paypoint 1	1 292.99	1 379.37	1 426.27	1 426.27	1 440.53	1 454.94	1 469.49	1 484.18
Paypoint 2	1 319.35	1 408.67	1 456.56	1 456.56	1 471.13	1 485.84	1 500.70	1 515.70
Paypoint 3	1 345.72	1 438.04	1 486.93	1 486.93	1 501.80	1 516.82	1 531.99	1 547.31
Level 8								
Paypoint 1	1 372.04	1 454.37	1 503.82	1 548.93	1 564.42	1 580.07	1 595.87	1 611.83
Paypoint 2	1 398.38	1 482.28	1 532.68	1 578.66	1 594.44	1 610.39	1 626.49	1 642.76
Paypoint 3	1 424.68	1 510.17	1 561.51	1 609.92	1 626.02	1 642.28	1 658.70	1 675.29
Crisis accommodation worker Category A — weekly (\$)								
Level 1								
Paypoint 1	847.30	869.33	898.89	898.89	907.87	916.95	926.12	935.38
Paypoint 2	871.19	909.09	939.99	939.99	949.39	958.89	968.48	978.16
Paypoint 3	895.11	928.41	959.97	959.97	969.57	979.27	989.06	998.95
Paypoint 4	919.05	957.93	990.50	990.50	1 000.40	1 010.41	1 020.51	1 030.72
Level 2								
Paypoint 1	980.66	1 017.93	1 052.54	1 052.54	1 063.06	1 073.69	1 084.43	1 095.28
2012, 3	Fair Work (Transitional Provisions and Consequential Amendments) Amendment Regulation 2012 (No. 1)							9

Classification	10/1/11	11/7/11	1/9/11	9/1/12	11/7/12	11/7/13	11/7/14	11/7/15
Paypoint 2	1 005.58	1 037.25	1 072.52	1 072.52	1 083.24	1 094.08	1 105.02	1 116.07
Paypoint 3	1 030.41	1 076.78	1 113.39	1 113.39	1 124.52	1 135.77	1 147.13	1 158.60
Paypoint 4	1 052.93	1 106.63	1 144.25	1 144.25	1 155.69	1 167.25	1 178.92	1 190.71
<i>Level 3</i>								
Paypoint 1	1 118.82	1 164.69	1 204.29	1 204.29	1 216.33	1 228.49	1 240.78	1 253.19
Paypoint 2	1 142.20	1 194.98	1 235.61	1 235.61	1 247.96	1 260.44	1 273.05	1 285.78
Paypoint 3	1 168.06	1 224.36	1 265.99	1 265.99	1 278.65	1 291.44	1 304.35	1 317.40
<i>Level 4</i>								
Paypoint 1	1 214.03	1 281.17	1 324.73	1 324.73	1 337.98	1 351.36	1 364.87	1 378.52
Paypoint 2	1 240.37	1 300.41	1 344.62	1 344.62	1 358.07	1 371.65	1 385.37	1 399.22
Paypoint 3	1 266.69	1 319.88	1 364.76	1 364.76	1 378.41	1 392.19	1 406.11	1 420.17
<i>Crisis accommodation worker Category B — weekly (\$)</i>								
<i>Level 1</i>								
Paypoint 1	920.20	944.13	976.23	976.23	985.99	995.85	1 005.81	1 015.87
Paypoint 2	946.24	987.39	1 020.96	1 020.96	1 031.17	1 041.49	1 051.90	1 062.42
Paypoint 3	972.31	1 008.48	1 042.77	1 042.77	1 053.19	1 063.73	1 074.36	1 085.11
Paypoint 4	998.40	1 040.63	1 076.01	1 076.01	1 086.77	1 097.63	1 108.61	1 119.70
10	<i>Fair Work (Transitional Provisions and Consequential Amendments) Amendment Regulation 2012 (No. 1)</i>							2012, 3

Classification	10/1/11	11/7/11	1/9/11	9/1/12	11/7/12	11/7/13	11/7/14	11/7/15
Level 2								
Paypoint 1	1 065.41	1 105.90	1 143.50	1 143.50	1 154.93	1 166.48	1 178.15	1 189.93
Paypoint 2	1 092.57	1 126.98	1 165.30	1 165.30	1 176.95	1 188.72	1 200.61	1 212.62
Paypoint 3	1 119.64	1 170.02	1 209.80	1 209.80	1 221.90	1 234.12	1 246.46	1 258.92
Paypoint 4	1 144.18	1 202.53	1 243.42	1 243.42	1 255.85	1 268.41	1 281.09	1 293.90
Level 3								
Paypoint 1	1 215.93	1 266.63	1 309.70	1 309.70	1 322.79	1 336.02	1 349.38	1 362.88
Paypoint 2	1 241.44	1 298.80	1 342.96	1 342.96	1 356.39	1 369.95	1 383.65	1 397.49
Paypoint 3	1 269.60	1 330.79	1 376.04	1 376.04	1 389.80	1 403.70	1 417.73	1 431.91

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

Note 2 The wage rates for Community service worker, levels 6, 7 and 8, and Crisis accommodation worker Category A, level 4, do not include a 7.5% loading.

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.