

FAIR WORK AUSTRALIA

DRAFT ORDER

Fair Work Act 2009

s.302—Application to for an Equal Remuneration Order

Application by Australian Municipal, Administrative, Clerical and Services Union and Others

(C2010/3131)

**SOCIAL, COMMUNITY, HOME CARE AND DISABILITY SERVICES INDUSTRY
AWARD 2010**

[MA000100]

Pursuant to s.302 of the *Fair Work Act 2009* an Equal Remuneration Order is made as follows:

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- 1. Title**
 - 1.1 This Order is the Social, Community and Disability Services Industry Equal Remuneration Order 2012.
 - 2. Commencement and obligations**
 - 2.1 This Order shall commence on 1 July 2012 and shall continue in force and effect until further order of Fair Work Australia.
 - 2.2 The monetary obligations imposed on employers by this order may be absorbed into over award payments. Nothing in this Order requires an employer to maintain or increase any over award payment.

- 2.3** The monetary obligations imposed on employers by this Order may be subject to salary packaging arrangements in accordance with clause 14 of the award. The terms and conditions of such a package must not, when viewed objectively, be less favourable than the entitlements otherwise available under the Award and this Order.

3. Definitions and interpretation

- 3.1** In this Order, unless the contrary intention appears:

Act means the *Fair Work Act 2009* (Cth)

agreement-based transitional instrument has the meaning in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

Award means the Social, Community, Home Care and Disability Services Industry Award 2010

award-based transitional instrument has the meaning in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

award minimum wage means:

- (a) the minimum wage for the relevant classification in the Award; or
- (b) the minimum wage in the relevant transitional minimum wage instrument and/or award-based transitional instrument for the classification concerned whichever is higher

crisis assistance and supported housing sector means the provision of crisis assistance and supported housing services

ER Payments means the payments in clause 6 of this Order.

on-hire means the on-hire of an employee by their employer to a client, where such employee works under the general guidance and instruction of the client or a representative of the client

social and community services sector means the provision of social and community services including social work, recreation work, welfare work, youth work or community development work, including organisations which primarily engage in policy, advocacy or representation on behalf of organisations carrying out such work and the provision of disability services including the provision of personal care and domestic and lifestyle support to a person with a disability in a community and/or residential setting including respite centre and day services.

Social, Community and Disability Services Industry means the crisis assistance and supported housing sector and the social and community services sector

transitional minimum wage instrument has the meaning in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

4. Coverage and application

- 4.1** This Order covers employers throughout Australia in the social and community services and crisis assistance and supported housing sectors and their employees in the classifications listed in Schedules B and C of the Award.
- 4.2** This Order covers any employer which supplies labour on an on-hire basis in the social and community services and crisis assistance and supported housing sectors in respect of on-hire employees in classifications covered by, and those on-hire employees, while engaged in the performance of work for a business in that sector.

5. Transitional arrangements in relation to minimum wages

- 5.1** Clauses 5.2 to 5.4 apply to an employer which from the first full pay period on or after 1 July 2012:

- (a)** was obliged, or
- (b)** but for the operation of an agreement-based transitional instrument or an enterprise agreement would have been obliged, or
- (c)** if it had been an employer in the industry or of the occupations covered by this Order on 1 July 2012 would have been obliged

to pay minimum wages in accordance with clause A.3.9 of Schedule A to the Award.

- 5.2** The employer must pay the employee no less than either:

- (a)** the minimum wage for the relevant classification in the Award; or
- (b)** the minimum wage in the relevant transitional minimum wage instrument and/or award-based transitional instrument for the classification concerned

whichever is higher.

- 5.3** The employer must apply any increase in minimum wages in the Award to the amounts in clause 5.2.

- 5.4** Clauses 5.2 and 5.3 cease to apply to an employer immediately before the beginning of the first full pay period on or after 1 December 2020.

6. Equal remuneration payments for social and community services and crisis assistance and supported housing employees

6.1 ER Payments

ER Payments shall:

- (a) be regarded as part of the ordinary rate of pay for all purposes; and
- (b) be calculated with reference to ER Percentages.

6.2 ER Percentages shall be expressed as a percentage in addition to the minimum wages set out in clause 15 of the *Social, Community, Home Care and Disability Services Industry Award 2010*.

6.3 The ER Percentages that apply to each relevant classification are as follows:

Classification	ER Payment
Social and community services employee level 2	23%
Social and community services employee level 3 Crisis accommodation employee Level 1	26%
Social and community services employee level 4 Crisis accommodation employee Level 2	32%
Social and community services employee level 5 Crisis accommodation employee Level 3	37%
Social and community services employee level 6 Crisis accommodation employee Level 4	40%
Social and community services employee level 7	42%
Social and community services employee level 8	45%

6.4 From the first full pay period on or after 1 December 2020, the employer shall pay employees described in Schedules B and C of the Award:

(a) ER Percentages; and

(b) the applicable minimum wage in clause 15 of the *Social, Community, Home Care and Disability Services Industry Award 2010*

These payments shall be referred to as “the Final Rate”, and are the following percentages of the applicable minimum wage in clause 15 of the Award as set out in the following table:

Classification	ER Percentage plus clause 15 rate (“the Final Rate”)
Social and community services employee level 2	123%
Social and community services employee level 3 Crisis accommodation employee Level 1	126%
Social and community services employee level 4 Crisis accommodation employee Level 2	132%
Social and community services employee level 5 Crisis accommodation employee Level 3	137%
Social and community services employee level 6 Crisis accommodation employee Level 4	140%
Social and community services employee level 7	142%
Social and community services employee level 8	145%

6.5 The monetary value of the “Final Rates” referred to in clause 6.4 are set out in Schedule 1 to this Order. Schedule 1 will be amended annually by Fair Work Australia to reflect any increases to the minimum wages in the Award.

Phase in of ER Payments

6.6 ER payments will be phased in as follows and the amounts calculated will be paid in addition to award minimum wages:

- (a)** From the first full pay period on or after 1 December 2012 an employee described in Schedules B and C of the Award shall be entitled to payments equal to the difference between the Final Rate as defined in clause 6.4 and the minimum wage in clause 5.2, as increased from time to time, for the relevant classification in the Award, divided by nine.
- (b)** From the first full pay period on or after 1 December 2013 an employee described in Schedules B and C of the Award shall be entitled to payments equal to the difference between the Final Rate as defined in clause 6.4 and the minimum wage in clause 5.2, as increased from time to time, for the relevant classification in the Award, divided by nine then multiplied by two.

- (c) From the first full pay period on or after 1 December 2014 an employee described in Schedules B and C of the Award shall be entitled to payments equal to the difference between the Final Rate as defined in clause 6.4 and the minimum wage in clause 5.2, as increased from time to time, for the relevant classification in the Award, divided by nine then multiplied by three.
- (d) From the first full pay period on or after 1 December 2015 an employee described in Schedules B and C of the Award shall be entitled to payments equal to the difference between the Final Rate as defined in clause 6.4 and the minimum wage in clause 5.2, as increased from time to time, for the relevant classification in the Award, divided by nine then multiplied by four.
- (e) From the first full pay period on or after 1 December 2016 an employee described in Schedules B and C of the Award shall be entitled to payments equal to the difference between the Final Rate as defined in clause 6.4 and the minimum wage in clause 5.2, as increased from time to time, for the relevant classification in the Award, divided by nine then multiplied by five.
- (f) From the first full pay period on or after 1 December 2017 an employee described in Schedules B and C of the Award shall be entitled to payments equal to the difference between the Final Rate as defined in clause 6.4 and the minimum wage in clause 5.2, as increased from time to time, for the relevant classification in the Award, divided by nine then multiplied by six.
- (g) From the first full pay period on or after 1 December 2018 an employee described in Schedules B and C of the Award shall be entitled to payments equal to the difference between the Final Rate as defined in clause 6.4 and the minimum wage in clause 5.2, as increased from time to time, for the relevant classification in the Award, divided by nine then multiplied by seven.
- (h) From the first full pay period on or after 1 December 2019 an employee described in Schedules B and C of the Award shall be entitled to payments equal to the difference between the Final Rate as defined in clause 6.4 and the minimum wage in clause 5.2, as increased from time to time, for the relevant classification in the Award, divided by nine then multiplied by eight.

7. Payment

- 7.1** Payments in accordance with this Order will be paid weekly or fortnightly by cash, cheque or electronic funds transfer into the bank or financial institution account nominated by the employee.

8. Access to the Order

- 8.1** Employers must ensure that copies of this Order are available to all employees to whom it applies either on a noticeboard which is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible.

Schedule 1

Classification	Clause 15 rate \$	ER Percentage	Final Rate \$
Social and community services employee level 2.1	686.20	23%	844.03
Social and community services employee level 2.2	707.80	23%	870.59
Social and community services employee level 2.3	729.30	23%	897.04
Social and community services employee level 2.4	748.80	23%	921.02
Social and community services employee level 3.1 Crisis accommodation employee Level 1.1	748.80	26%	943.49
Social and community services employee level 3.2 Crisis accommodation employee Level 1.2	770.40	26%	970.70
Social and community services employee level 3.3 Crisis accommodation employee Level 1.3	786.80	26%	991.37
Social and community services employee level 3.4 Crisis accommodation employee Level 1.4	802.80	26%	1011.53
Social and community services employee level 4.1 Crisis accommodation employee Level 2.1	824.30	32%	1088.08
Social and community services employee level 4.2 Crisis accommodation employee Level 2.2	845.90	32%	1116.59
Social and community services employee level 4.3 Crisis accommodation employee Level 2.3	867.50	32%	1145.10
Social and community services employee level 4.4 Crisis accommodation employee Level 2.4	887.00	32%	1170.84
Social and community services employee level 5.1 Crisis accommodation employee Level 3.1	908.60	37%	1244.78

Social and community services employee level 5.2 Crisis accommodation employee Level 3.2	928.10	37%	1271.50
Social and community services employee level 5.3 Crisis accommodation employee Level 3.3	949.70	37%	1301.09
Social and community services employee level 6.1 Crisis accommodation employee Level 4.1	971.20	40%	1359.68
Social and community services employee level 6.2 Crisis accommodation employee Level 4.2	992.80	40%	1389.92
Social and community services employee level 6.3 Crisis accommodation employee Level 4.3	1014.40	40%	1420.16
Social and community services employee level 7.1	1035.90	42%	1470.98
Social and community services employee level 7.2	1057.50	42%	1501.65
Social and community services employee level 7.3	1079.10	42%	1532.32
Social and community services employee level 8.1	1100.60	45%	1595.87
Social and community services employee level 8.2	1122.20	45%	1627.19
Social and community services employee level 8.3	1143.80	45%	1658.51