

Operation of the Equal Remuneration Order

1. The Equal Remuneration Order commenced on 1 July 2012, and provides for equal remuneration payments in addition to the *Social, Community, Home Care and Disability Services Industry Award 2010* (SCHADS Award) minimum rates for SACS classifications 2-8 and Crisis Accommodation classifications 1- 4.
2. The Order provides for rates of pay which will be between 23-45% above the SCHADS Award minimum rates, depending on the classification level once fully phased in (the ‘final ER rates’). These are inclusive of a 4% loading to compensate for obstacles to bargaining in the sector.
3. The final ER rates are being phased in between 2012 and 2020 via nine equal instalments¹, as outlined in 5.5 of the Order.
4. Table 1 shows the percentage difference between the SCHADS Award rates, and the final ER rates, for each SACS classification level. As the final ER rates are being phased in via nine equal instalments, the table also shows the approximate percentage difference per annum.

SACS Level	Final ER rates by 2020 (% above Award rates)	1/9 instalment per annum (%)*
2	23	2.6
3	26	2.9
4	32	3.6
5	37	4.1
6	40	4.4
7	42	4.7
8	45	5

*The exact percentage varies slightly in the years after 2012 due to the effects of compounding, incorporation of national wage increases and rounding.
 Note: The payments for Crisis Accommodation are identical, with CA levels 1-4 aligning with SACS levels 3-6.

Table 1 Final ER rates, as a percentage above the SCHADS Award rate at each SACS classification level

¹ [2012] FWAFB 5184 at [73]

5. The ERO case ran during the first 2 years of implementing the modern award system, and the transition from pre-reform award and NAPSA classifications and pay rates to the modern award was put on hold pending the outcome of the ERO case.
6. A Fair Work Commission audit of awards for award modernisation indicated 39 pre-reform awards and NAPSAs that would transition to the SCHADS Award. These instruments had different classification and pay structures, with some classification and pay points having rates lower than the SCHADS rate for the equivalent classification (as set out in clauses 15 and 16 of the Award), and some above.
 - a) Where a pre-reform award or NAPSA pay rate was below the equivalent SCHADS Award rate (cl 15 & 16 of the award), from July 2012 the rate transitioned fully to the SCHADS Award rate, without the phasing in process that applied to other modern awards.
 - b) Where a pre-reform award or NAPSA pay rate was above the equivalent SCHADS Award rate, that rate was preserved as a transitional minimum rate of pay by Clause A.3.9 of the SCHADS Award. Although A.3.9 ceased effect on 1 July 2014, it is preserved in 5.3 of the ERO, for the duration of the phasing in of the final ERO rates.
7. In order to determine whether a transitional minimum rate applies to a particular position, it is necessary to:
 - a) Classify the position under the SCHADS Award;
 - b) Classify the position under the relevant pre-reform award or NAPSA, as if it still applied;
 - c) Compare the pay rates for the classification for each of the two instruments at 1 January 2010;
 - d) If the relevant pre-reform award or NAPSA rate is higher, then a transitional rate applies and is used as the basis for the calculation of ERO payments.
8. Each December from 2012-2020 an ERO instalment is payable. This is 1/9 of the difference between the applicable SCHADS or transitional minimum rate, and the final full ER amount calculated on the SCHADS rate.
9. The effect is that if a transitional minimum rate applies that is above the SCHADS Award rate, a smaller increase is payable.
10. Figures 1 and 2 illustrate how this works.

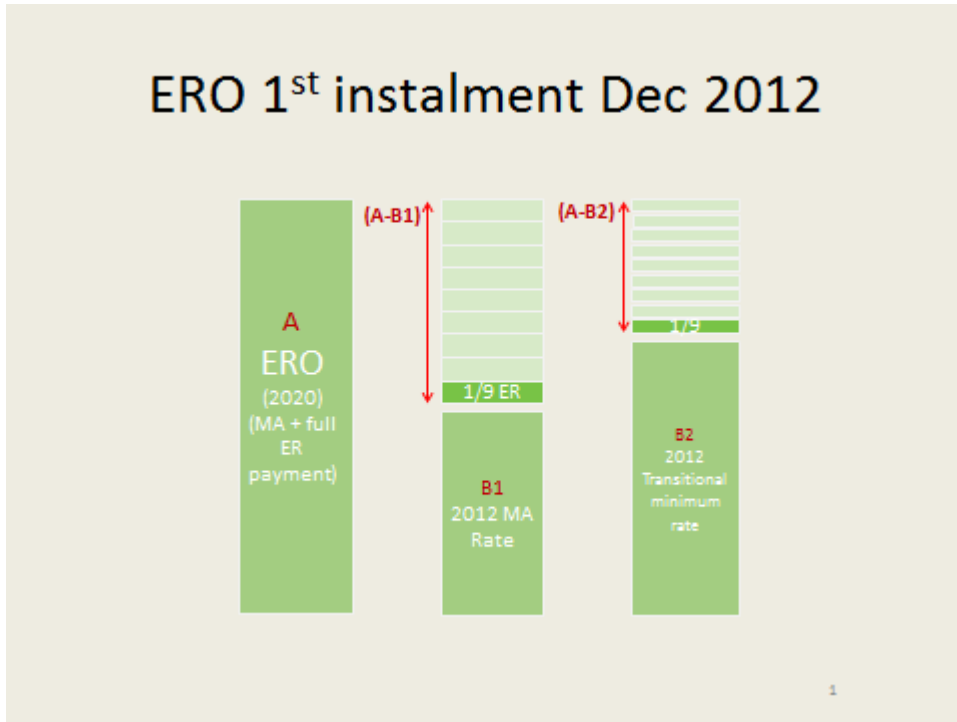


Figure 1 The application of the first ERO instalment in 2012. Column A represents the full ER payment calculated on the relevant SCHADS rate of pay (MA) for a classification level. Column B1 shows the payment of the first instalment of 1/9 of the ER payment on the SCHADS rate (MA). Column B2 shows the payment of the first instalment where a transitional minimum rate applies.

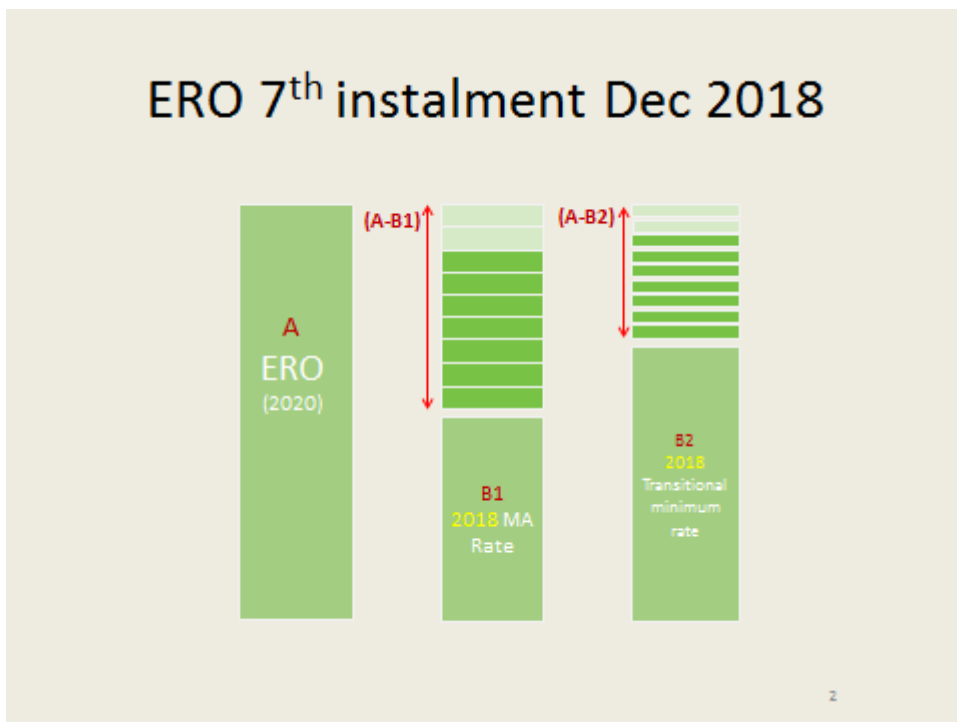


Figure 2 The application of the most recent, 7th, instalment in December 2018.

11. Figures 1 and 2 show how at any point in time, the actual rate paid will be different for different transitional pay rates derived from pre-reform awards or NAPSAs.
12. Figure 3 illustrates how the gap between a transitional rate plus ER and the SCHADS rate plus ER closes over time, and disappears by December 2020.

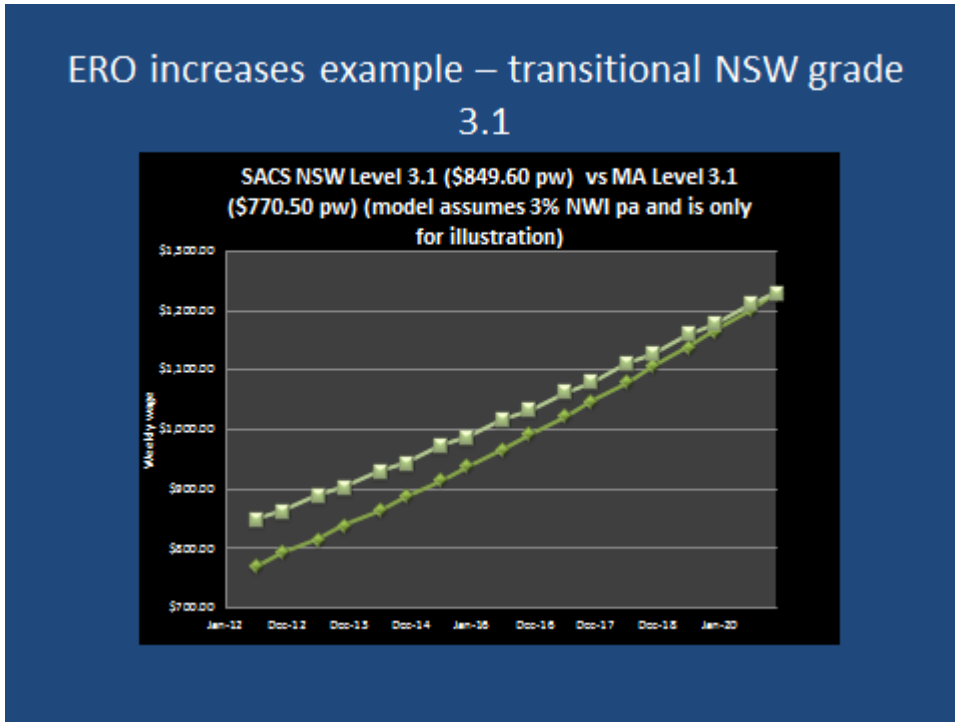
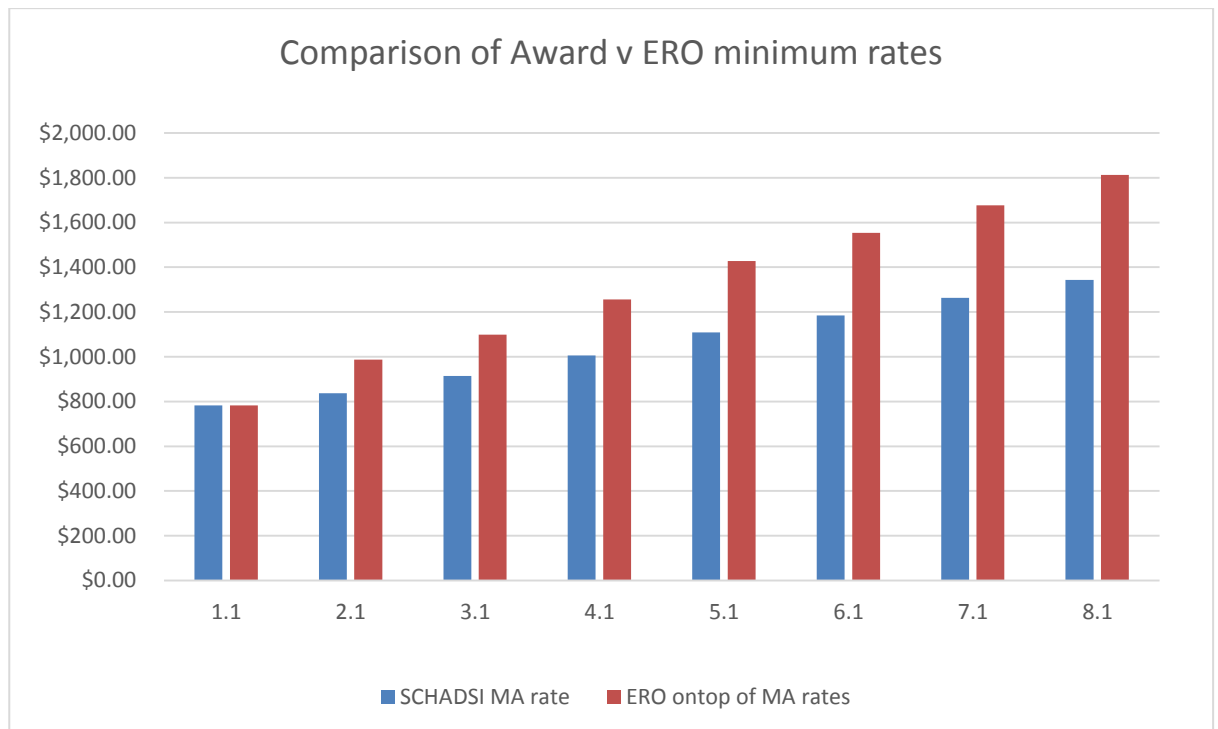


Figure 3 Example of how the gap between SCHADS plus ER pay rates and transitional award + ER pay rates closes over the period 2012-2020. The example is based on ERO payments for the transitional rate for SACS Level 3.1 (derived from Grade 3.1 of the SACS NSW NAPSA), compared with ERO payments for the SCHADS rate for SACS Level 3.1 set by clause 15.

13. Payments under the ERO count as part of the ordinary rate of pay for all purposes. The Standard Rate of the award that is used for the calculation of allowances does not however incorporate the ER payment.
14. From December 2020, the final ER rates will be fully phased in, and forms part of the ordinary rate of pay for all purposes. The transitional rates will no longer apply from this date, and will no longer be relevant because the final ER rate is the same irrespective of pre-modern award coverage.
15. One consequence of the ERO is that the rates set out in clauses 15 and 16 of the SCHADS Award do not represent the minimum rates actually paid.
16. Table 2 below compares the clause 15 rates for SACS classifications in the SCHADS Award (used in the Information Note published by FWC on 9 April 2019), with the actual rates payable for the current instalment under the ERO, where the pre-modern award instrument was not higher than the SCHADS award at 1 January 2010. In these circumstances, calculation of the current ER instalment is based on the SCHADS Award rate in Cl. 15 only.

SACS Level	SCHADS CI 15 rate	ERO rate	% difference after the December 2018 increase
1.1	\$782.00	n/a	0
2.1	\$837.40	\$987.20	17.9
3.1	\$913.70	\$1098.47	20.2
4.1	\$1005.90	\$1256.26	24.9
5.1	\$1108.70	\$1427.76	28.8
6.1	\$1185.30	\$1554.06	31.1
7.1	\$1264.00	\$1676.91	32.7
8.1	\$1343.00	\$1813.05	35

Table 2 Rates payable under the ERO where the pre-modern award instrument was not higher than the SCHADS Award rate at 1 January 2010.



Graph 1: gives a visual representation of Table 2

17. There are thousands of potential paypoints that could apply for the various possible classification translations and transitional pay rates from about 39 pre-reform awards and NAPSAs. Table 3 uses one SCHADS Award paypoint - the 4 year degree entry point (SACS 3.4) - to illustrate the different transitional rates that apply for some of the more commonly used pre-reform awards and NAPSAs that specified a 4 year degree entry point.

Pre-reform award or NAPSA	Current ER rate (Dec 2018)	Difference compared to current ER rate calculated on SCHADS CL.15 rate only	% Difference
SACS awards from ACT, Qld, SA, & WA Community Services Award Tas	\$1177.72* (pre-modern awards not higher than SCHADS Award rate)	-	-
SACS Vic - Social worker classification	\$1184.54*	\$6.87	0.6%
SACS NT	\$1185.99*	\$8.27	0.7%
Disability Services Vic	\$1202.61**	\$24.89	2.1%
SACS NSW	\$1207.78	\$30.02	2.6%
Qld TPEO [^]	\$1257.70*	\$79.98*	6.8%*

*The Fair Work Ombudsman Pay Guide Rates

** Rates may vary depending on rounding

Table 3 Comparison of current ER rates where pre-modern award was higher than the SCHADS Award at 1 January 2010, with ER rates where pre-modern award was not higher than SCHADS Award, for Level 3.4 (calculated on the SCHADS Award rate only).

18. [^]The final example in Table 3 is the rate from the Queensland Transitional Pay Equity Order which applies to a small number of organisations in Queensland. The TPEO preserves the effect of the 2009 Queensland pay equity order of the QIRC which delivered payments similar to the national ERO. Those equal remuneration payments were delivered in full by 2015. The December ER payments do not apply to those rates. National wage increases do apply to the TPEO, and the TPEO rates will align with the equal remuneration order rates based on the modern award by December 2020.

National Disability Services

Australian Federation of Employers and Industries

Australian Services Union

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