



## BACKGROUND PAPER

*Fair Work Act 2009*

s.285—Annual wage reviews to be conducted

### **Annual Wage Review 2016–17—Transitional instruments (C2017/1)**

MELBOURNE, 19 SEPTEMBER 2016

*Note: This is a background document only. It has been prepared by the Commission research area and does not represent the concluded views of the Commission on any issue.*

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## Introduction

[1] In the Annual Wage Review 2015–16 Decision the Expert Panel for annual wage reviews (Expert Panel) made the following comments:

“[584] While it will be a matter for the Panel constituted to conduct the 2016–17 Review, we would propose that a review be undertaken of the transitional instruments that must be dealt with as part of AWRs. The review will consider the status and effect of transitional instruments, including whether they have been, or can be, terminated by the Commission. A background paper providing information on transitional instruments will be published later this year. Interested parties will be given an opportunity to make submissions on any issues arising out of the review of the transitional instruments.”<sup>1</sup>

[2] The Expert Panel subsequently issued a statement on 24 August 2016 which noted that a preliminary hearing would be held on 24 October 2016 which would deal with, amongst other things, a review of transitional instruments.<sup>2</sup>

[3] A range of instruments were created by the *Workplace Relations Amendment (Work Choices) Act 2005* (Cth) (Work Choices Act) and State industrial relations systems. These instruments were preserved as part of the transition to modern awards and other *Fair Work Act 2009* (Cth) (Fair Work Act) instruments.

[4] Modernisable instruments include:

- award-based transitional instruments, and
- transitional Australian Pay and Classification Scales (APCSs).<sup>3</sup>

[5] The *Workplace Relations Act 1996* (Cth) (Workplace Relations Act) and the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) (Transitional Act) required award modernisation processes.<sup>4</sup> The initial award modernisation process created 122 modern awards which covered most employers and employees previously covered by transitional instruments.

[6] Following the award modernisation process of 2008 most transitional instruments have terminated, either as part of the termination of modernisable instruments process<sup>5</sup> or by operation of sunset provisions in the Transitional Act under which enterprise instruments terminated.<sup>6</sup>

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<sup>1</sup> [\[2016\] FWCFB 3500](#) at para. 584.

<sup>2</sup> [\[2016\] FWCFB 5924](#) at paras 7–8.

<sup>3</sup> [\[2010\] FWAFB 9916](#) at para. 6.

<sup>4</sup> *Workplace Relations Act 1996* Part 10A.

<sup>5</sup> [\[2010\] FWAFB 9916](#) at para. 24.

<sup>6</sup> These instruments terminated on 31 December 2013, Transitional Act item 9, Schedule 6.

[7] Of the estimated **3600** instruments in operation before 1 January 2010, **3330** have been terminated.<sup>7</sup>

[8] A number of transitional instruments continue to operate, regardless of whether they cover employers or employees. The Commission must review the wage rates in instruments yet to be terminated as part of the annual wage review.<sup>8</sup>

[9] An outline of transitional instruments describing the types of instruments and when they terminate is at **Attachment A**. A table setting out the operation and termination of the transitional instruments is at **Attachment B**. An indicative list of the transitional instruments that continue to operate is included at **Appendix 1**.

[10] This paper considers the issues related to the continued operation of the remaining transitional instruments. The paper also poses a number of questions for parties to consider in relation to which, if any, of the remaining instruments should continue to operate.

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<sup>7</sup> This includes 1318 transitional instruments of general application (see para. 16 below), 1876 transitional enterprise instruments that terminated when no application to modernise was made (see para. 22 below) and 136 transitional enterprise instruments for which a determination has been made (see para. 22 and 23 below).

<sup>8</sup> [\[2013\] FWCFB 4000](#) at para. 550.

## Modernisation and Termination of Transitional Instruments

[11] The Commission is required to modernise and terminate transitional instruments in accordance with the requirements of the Transitional Act.<sup>9</sup>

[12] The modernisation and termination processes are interrelated because some instruments cannot be terminated until modernisation processes are finalised.

[13] Awards and transitional instruments of general application have, for the most part, been modernised or terminated.<sup>10</sup> However, separate processes are underway including:

- modernisation of enterprise instruments,<sup>11</sup>
- modernisation of State reference public sector awards,<sup>12</sup> and
- termination of instruments.<sup>13</sup>

### Instruments of general application

[14] On 1 January 2010, the Commission made 122 modern awards to replace approximately 1560 pre-reform awards and NAPSAs that applied to multiple enterprises.<sup>14</sup>

[15] The Commission is required to terminate modernisable instruments as soon as practicable after a modern award comes into operation.<sup>15</sup>

[16] In 2011 the Commission undertook a process terminating modernisable instruments where the Commission considered the coverage was completely replaced by a modern award.<sup>16</sup> Through this process **1318** award-based transitional instruments were terminated. Where appropriate, the Commission also terminated APSCs and any common rule, derived from those award-based transitional instruments.<sup>17</sup>

[17] As part of this process the Commission was not permitted to terminate modernisable instruments that are enterprise instruments, State reference public sector transitional awards or instruments that cover employees also covered by such instruments.<sup>18</sup> Some further instruments were also excluded from the termination process due to specific circumstances raised by parties during hearings. These instruments include:

- **186** instruments that cover employees also covered by an enterprise instrument,
- **10** instruments that cover employees also covered by a State reference public sector transitional award, and

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<sup>9</sup> Transitional Act item 4 of Schedule 6; item 3 of Schedule 6A; item 3 of Schedule 5.

<sup>10</sup> [\[2013\] FWCFB 4000](#) at para. 550.

<sup>11</sup> Transitional Act item 4 of Schedule 6; item 2(1) of Schedule 6: an enterprise instrument in this context is an enterprise award-based instrument; an enterprise preserved collective State agreement or a Division 2B enterprise award.

<sup>12</sup> Transitional Act item 3 of Schedule 6A.

<sup>13</sup> Transitional Act item 3 of Schedule 5.

<sup>14</sup> Annual Report of Fair Work Australia, 1 July 2009–30 June 2010, p 15.

<sup>15</sup> Transitional Act item 3 of Schedule 5.

<sup>16</sup> [\[2010\] FWAFB 9916](#) para. 6.

<sup>17</sup> See for example order terminating *Bread Trade (Victoria) Award 1999* [PR511769](#)

<sup>18</sup> Transitional Act item 3 of Schedule 5.

- 4 instruments that were not terminated due to concerns raised during proceedings regarding the status of the instrument.

[18] Further, 42 instruments that were replaced by the *Social, Community, Home Care and Disability Services Industry Award 2010* (SACS modern award) were not terminated. This issue is addressed in further detail in paragraphs [32] to [37].

[19] Additionally some instruments that provided only for long service leave were not terminated.<sup>19</sup>

Question for parties:

1. Given the operation of s.113 of the Fair Work Act, can the long service leave awards be terminated?

### Enterprise instruments

[20] If an application was made to modernise a transitional enterprise instrument, the Commission may make a new modern enterprise award to replace the transitional instrument.<sup>20</sup>

[21] However, if the Commission decides not to make a modern award, having regard to factors set out in the Transitional Act, the transitional instrument terminates on the operational date of the decision.<sup>21</sup> Additionally, if no application was made to modernise an enterprise instrument by 31 December 2013, the instrument terminated.<sup>22</sup>

[22] The Commission received **141 applications** to modernise or terminate enterprise instruments by 31 December 2013. The remaining **1876 enterprise instruments** terminated at the end of 31 December 2013.

[23] The enterprise modernisation process is ongoing and applications in relation to 5 transitional instruments covering a single enterprise<sup>23</sup> are yet to be finalised.<sup>24</sup>

### State reference public sector transitional awards

[24] The Transitional Act obliges the Commission to modernise or terminate State reference public sector transitional awards still operating after 31 December 2013.<sup>25</sup> State

<sup>19</sup> See [List of instruments containing long service leave provisions](#)

<sup>20</sup> Transitional Act item 4, Schedule 6 and item 4, Schedule 6A.

<sup>21</sup> Transitional Act item 4, Schedule 6 and item 4, Schedule 6A.

<sup>22</sup> Transitional Act item 9, Schedule 6.

<sup>23</sup> Under item 2, Schedule 6 to the Transitional Act, an enterprise instrument may also cover more than one enterprise if the employers all carried on similar businesses under the same franchise.

<sup>24</sup> From the 141 applications, 32 modern enterprise awards have been made. 54 applications have been withdrawn in full or in part. The Commission has deemed these instruments terminated on the date the application was withdrawn.

<sup>25</sup> Transitional Act item 6, Schedule 6A.

reference public sector transitional awards may not be terminated by the Commission until it is satisfied the employees who were covered by the instrument will be completely covered by a modern award (other than the *Miscellaneous Award*) that is appropriate for them.<sup>26</sup>

[25] On 1 January 2014 it was estimated that 54 State reference public sector transitional awards operated. As at 1 September 2016:

- 8 State reference public sector modern awards have been made (including one yet to commence operation),
- 40 State reference public sector transitional awards have been terminated, and
- 6 are yet to be determined.

### **Outstanding issues**

[26] Finalisation of the modern enterprise instrument process and the State reference public sector modern awards process may result in the termination of further transitional instruments being considered in the modernisation processes outlined above.

[27] Upon completion of those processes, the Commission will terminate the instruments outlined in paragraph [17] as well as any instruments that were omitted from the 2011 termination process in error. A list of all transitional instruments that the Commission considers remain current is contained in **Appendix 1**.

#### Questions for parties:

2. The parties are directed to review the list of existing transitional instruments at Appendix 1 and indicate whether there are instruments on the list in which they have an interest and that they consider need to remain current.

3. Do the parties agree that when the modernisation processes have been completed, the modernisable instruments in Appendix 1 should be terminated by the Commission?

### **Apprentices and trainees for whom competency-based wage arrangements apply**

[28] The *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009* (Transitional Regulations) create some exceptions to modern award coverage. If the award-based transitional instrument sets a competency-based training arrangement, or relates exclusively to the provision of tools for an apprentice, then it will continue to cover those employees and employers (and any related transitional APCs) after 1 January 2010, including for employment commenced after that date.<sup>27</sup>

[29] Division 2B State awards that cover similar competency-based arrangements and tool provisions continue to cover employers and employees after 1 January 2011. Employees, and

<sup>26</sup> Transitional Act item 5, Schedule 6A.

<sup>27</sup> Transitional regulations, reg 3B.02.

their respective employer, employed into those arrangements after 1 January 2011 will also be covered by the Division 2B State award.<sup>28</sup>

[30] The following instruments have been preserved as they relate to competency-based arrangements and the provision of tools:

- *Order—Apprentices’ and Trainees’ Wages and Conditions (Queensland Government Departments and Certain Government Entities) 2000* (Qld),
- *Order—Apprentices’ and Trainees’ Wages and Conditions (Excluding Certain Queensland Government Entities) 2003 Order* (Qld), and
- *Order—Supply of Tools to Apprentices 1998* (Qld).<sup>29</sup>

[31] A modern award must not contain terms and conditions of employment which are operate in one or more, but not every, State and Territory.<sup>30</sup> Accordingly these provisions have not been adopted into modern awards in relation to Queensland employees only.

Questions for parties:

4. Are there any other transitional instruments not listed above that are preserved by the Transitional regulations for the purposes of providing for competency-based arrangements and provision of tools?

5. Do parties agree that, regardless of the termination and modernisation of other transitional instruments, there will be an on-going requirement for the Commission to review Division 2B State awards, award-based transitional instruments and related APCSs as part of the annual wage review?

6. Given the limitations under s.154, can instruments be made under the Fair Work Act to replace these instruments?

## **Transitional Instruments Related to Pay Equity Orders**

### **The Social and Community Sector Pay Equity Order**

[32] At the time of the termination process above, a Full Bench of the Commission was dealing with an equal remuneration case concerning the SACS modern award.<sup>31</sup>

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<sup>28</sup> Transitional regulations, reg 3A.01; most competency-based training progression this relates to is found in Queensland State awards affected by the *Order—Apprentices’ and Trainees’ Wages and Conditions (Queensland Government Departments and Certain Government Entities) 2000* (Qld), *Order—Apprentices’ and Trainees’ Wages and Conditions (Excluding Certain Queensland Government Entities) 2003* (Qld) and *Order—Supply of Tools to Apprentices 1998* (Qld).

<sup>29</sup> Therefore the following types of transitional instruments are preserved where they relate to competency-based arrangements and tool provisions: Division 2B State awards, Division 2B State reference transitional awards, and Transitional APCSs.

<sup>30</sup> Fair Work Act, s.154.

<sup>31</sup> Fair Work Act, s.154.

[33] The 2012 Equal Remuneration Order (2012 ERO) preserves the operation of a transitional instrument where the applicable rate in the transitional instrument was higher than the rate that would otherwise apply to an employee in the SACS modern award.<sup>32</sup>

[34] Clause 5 of the 2012 ERO operates in a similar manner to the model phasing provisions previously set out in modern awards (see **Attachment F**).<sup>33</sup> When creating the model phasing provisions, the Full Bench considered the protections provided in item 7 of Schedule 3 to the Transitional Act which protects and preserves accrued rights.<sup>34</sup> In relation to terminating transitional instruments, the Award Modernisation Full Bench states the following:

“[24] It can be seen that once a modern award comes into operation, the employees whom it covers cease to be covered by any award-based transitional instrument which previously covered them.”<sup>35</sup>

[35] As stated above, 42 transitional instruments<sup>36</sup> related to the SACS modern award were not terminated during the award modernisation process. This was in response to a submission by the Australian Municipal, Administrative, Clerical and Services Union (ASU). The ASU highlighted the fact that transitional provisions in Schedule A of the SACS modern award continued the application of minimum wages in transitional APCs and State reference transitional awards until 1 July 2011.<sup>37</sup>

[36] All instruments that were considered in the making of the SACS modern awards were retained as the scope of the 2012 ERO had not yet been determined. The Full Bench stated the position in relation to transitional instruments identified by the ASU should be reviewed after 1 July 2011.<sup>38</sup> These transitional instruments have not been terminated and continue to operate.

[37] It should be noted the 2012 ERO only applies to certain streams of employees covered by the SACS award, a number of the instruments retained are not relevant to the calculation of transitional rates of pay for the affected employees.

Question for parties:

7. Given the 2012 ERO preserves the operation of transitional provisions and the Fair Work Act obliges Commission to terminate transitional instruments, is there any reason why the Commission should not terminate the remaining transitional instruments related to the SACS modern award?

<sup>32</sup> Equal Remuneration Order, [PR525485](#), clause 5.

<sup>33</sup> [\[2009\] AIRCFB 800](#) at para. 32.

<sup>34</sup> [\[2009\] AIRCFB 800](#) at para. 54.

<sup>35</sup> [\[2010\] FWAFB 9916](#) at para. 24.

<sup>36</sup> The instrument retained included transitional APCs; State reference transitional awards; and other award-based transitional instruments.

<sup>37</sup> [\[2010\] FWAFB 9916](#) at para. 44.

<sup>38</sup> [\[2010\] FWAFB 9916](#) at para. 44.

## New transitional instruments

### *Transitional Pay Equity Orders*

[38] Two transitional pay equity orders currently operate to preserve the effect of an equal pay order issued by the QIRC on 12 June 2009 in relation to the social and community services industry in that state.<sup>39</sup> The instruments are known as Transitional Pay Equity Order 1<sup>40</sup> and Transitional Pay Equity Order 2.<sup>41</sup>

[39] The Explanatory Statement to the *Fair Work (Transitional Provisions and Consequential Amendments) Amendment Regulation 2012 (No. 2)* (Regulation No. 2)<sup>42</sup> states that the rates in the transitional pay equity orders are intended to converge with rates payable under the SACS modern award (as affected by the 2012 ERO) by 1 December 2020.<sup>43</sup>

[40] The regulations also provide that the transitional pay equity orders may be varied as part of the annual wage review either:

- by providing that any increase to minimum wages in the SACS modern award applies to the pay equity order;<sup>44</sup> or
- by importing the requirement that the Commission review minimum wages as if the pay equity order was a modern award (other than section 292 of the Fair Work Act).<sup>45</sup>

#### Question for parties:

8. Given these instruments continue to operate until 1 December 2020, should they remain as transitional instruments or can these entitlements be preserved for the affected employees in another Fair Work Act instrument?

<sup>39</sup> Explanatory Statement to Select Legislative Instrument 2012 No. 270; Explanatory Statement to Regulation No. 2.

<sup>40</sup> On 1 January 2010 the Commission was deemed to have made a transitional pay equity order (TPEO 1).<sup>40</sup> TPEO 1 continues the entitlement of covered Queensland employees (primarily in the social and community services industry) to rates of pay under Division 2B State awards for which base rates of pay were determined by a pay equity order made by a State Industrial Relations Commission.

<sup>41</sup> Transitional pay equity order 2 (TPEO 2) was deemed to be made by the Commission on 27 March 2011.<sup>41</sup> The effect of TPEO 2 is similar to that of TPEO 1, except that it applies to employees of specified employers who had been entitled to base rates of pay under Division 2B State reference transitional awards affected by a pay equity order.

<sup>42</sup> Explanatory Statement to Regulation No. 2.

<sup>43</sup> Explanatory Statement to Regulation No. 2, p 2.

<sup>44</sup> *Fair Work (Transition Provisions and Consequential Amendments) Regulations 2009* regs 3A.01B modifies the Transitional Act item 30C. The Commission may make a determination varying TPEO 1 to the extent that it is not derived from the *Queensland Community Services and Crisis Assistance Award – State 2008* which is a Division 2B State reference transitional award.

<sup>45</sup> *Fair Work (Transition Provisions and Consequential Amendments) Regulations 2009* regs 3A.01B modifies the Transitional Act item 30A(2)(b)(iii), Schedule 3A to insert item 30D which provides that Division 3, Part 2-6 of the FW Act applies except for section 292.

## The Annual Wage Review and Transitional Instruments

[41] The Expert Panel of the Commission must review the wages in a number of types of transitional instruments as part of the annual wage review each year.<sup>46</sup>

[42] The AIRC decision dealing with the termination of instruments<sup>47</sup> explained that various ‘types of instrument’ can be derived from what was originally a single federal or State award. The instruments listed at Appendix 1 may operate as one or more of the following types of instruments:

- Division 2B State awards,\*
- Transitional APCs,\*
- Division 2A State reference transitional awards,
- Division 2A State reference transitional enterprise awards,
- Division 2A State reference public sector transitional awards,
- Division 2B State reference transitional awards,\*
- Division 2B State reference transitional enterprise awards,
- Division 2B State reference public sector transitional awards,
- Division 2B State enterprise awards,
- Transitional pay equity orders, and
- Copied State awards.\*

[43] As outlined in Attachment B, under the current legislation those types of instruments shown with an asterisk above may continue to operate indefinitely.

[44] Accordingly the rates of pay in the instruments in Appendix 1 will need to be reviewed insofar as they operate as those various types of instruments.

[45] As outlined in paragraphs [28] to [30] transitional instruments related to competency-based arrangements and tool provisions will need to be reviewed by the Expert Panel while they remain in operation.

[46] Rates of pay in copied State awards<sup>48</sup> must also be reviewed by the Expert Panel. A copied State award can be made by the Commission at any time and the default period of the operation is five years starting on the day the employee’s termination occurred.<sup>49</sup>

[47] Transitional pay equity orders will be required to be reviewed by the Expert Panel until the Annual Wage Review 2019–20.<sup>50</sup>

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<sup>46</sup> Transitional Act, items 10(1) and 20(1) of Schedule 9 and item 12A(5) of Schedule 3.

<sup>47</sup> [\[2010\] FWA 9916](#) at para. 2.

<sup>48</sup> Division 3 of the *Fair Work Amendment (Transfer of Business) Act 2012* (ToB Act) inserted Part 6–3A into the Fair Work Act. The effect of Part 6–3A of the Fair Work Act is that where there is a transfer of business from a state public sector employer (a non-national system employer) to a national system employer, transferring employees retain the existing terms and conditions of employment in state awards (and agreements) that applied to them in a Copied state awards or Copied state agreement.

<sup>49</sup> Fair Work Act, section 768AO(2)(a).

<sup>50</sup> Transitional Act Item 30C Schedule 3A, and Item 45(2), Schedule 3.

Question for parties:

9. Do the parties have any views about the on-going process of review for transitional instruments as part of the annual wage reviews?

## **Summary of questions for parties**

### **Instruments of general application**

1. Given the operation of s.113 of the Fair Work Act, can the long service leave awards be terminated?

### **Outstanding issues**

2. The parties are directed to review the list of existing transitional instruments at Appendix 1 and indicate whether there are instruments on the list in which they have an interest and that they consider need to remain current.
3. Do the parties agree that when the modernisation processes have been completed, the modernisable instruments in Appendix 1 should be terminated by the Commission?

### **Apprentices and trainees for whom competency-based wage arrangements apply**

4. Are there any other transitional instruments not listed above that are preserved by the Transitional regulations for the purposes of providing for competency-based arrangements and provision of tools?
5. Do parties agree that, regardless of the termination and modernisation of other transitional instruments, there will be an on-going requirement for the Commission to review Division 2B State awards, award-based transitional instruments and related APCSs as part of the annual wage review?
6. Given the limitations under s.154, can instruments be made under the Fair Work Act to replace these instruments?

### **The Social and Community Sector Pay Equity Order**

7. Given the 2012 ERO preserves the operation of transitional provisions and the Fair Work Act obliges Commission to terminate transitional instruments,<sup>51</sup> is there any reason why the Commission should not terminate the remaining transitional instruments related to the SACS modern award?

### **Transitional Pay Equity Orders**

8. Given these instruments continue to operate until 1 December 2020, should they remain as transitional instruments or can these entitlements be preserved for the affected employees in another Fair Work Act instrument?

### **The Annual Wage Review and Transitional Instruments**

9. Do the parties have any views about the on-going process of review for transitional instruments as part of the annual wage reviews?

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<sup>51</sup> Transitional Act item 2, Schedule 5

## Attachment A—Overview of Transitional Instruments

[48] This section includes a short explanation of each type of transitional instrument. A full list of the types of transitional instruments, including their coverage and termination, is included at Attachment B to this paper.

### Division 2B State awards

[49] Division 2B State awards were originally State awards created by state Industrial Relations Tribunals.<sup>52</sup> Division 2B State awards<sup>53</sup> (including enterprise awards) were created by the Transitional Act. The Transitional Act used State reference powers to bring State awards into the federal system.<sup>54</sup> This extended the federal system to organisations not subject to the corporations power (see Notional agreement preserving State awards below).

[50] Division 2B State awards cover State reference employees and employers from New South Wales, Tasmania, South Australia and Queensland who were not in the federal system prior to **1 January 2010**.<sup>55</sup> Some Division 2B State awards still operate.<sup>56</sup>

### Notional agreement preserving State awards (NAPSAs)

[51] These instruments also have their origin in State awards. NAPSAs are notional instruments created by the Work Choices Act, using the corporations power, to preserve the effect of State awards with regard to employers brought into the federal system on **27 March 2006**.<sup>57</sup> As part of this process the wages components of the instruments were deemed to be separate instruments called Australian Pay and Classification Scales (APSCs).<sup>58</sup>

[52] NAPSAs continued in operation by the Transitional Act as award-based transitional instruments.<sup>59</sup> A number of instruments continue to operate.<sup>60</sup>

### Awards (pre-Fair Work Act award)

[53] These instruments are federal awards that were in existence before **27 March 2006**.<sup>61</sup> Under the Work Choices Act instruments within the scope of the corporations power became new instruments known as pre-reform awards (see also continuing Schedule 6 instruments

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<sup>52</sup> [\[2010\] FWAFB 8558](#) at para. 3.

<sup>53</sup> Division 2B instruments include ‘State awards’ and ‘state agreements’. Instruments listed in this section are limited to ‘State award’ instruments.

<sup>54</sup> Explanatory Memoranda *Fair Work Amendment (State Referrals and Other Measures) Bill 2009* at para. 102.

<sup>55</sup> [\[2010\] FWAFB 4000](#) at para. 374.

<sup>56</sup> This includes where they cover: Queensland apprentices/ trainees; employees also covered by enterprise instruments; or employees also covered by State reference public sector awards.

<sup>57</sup> [\[2010\] FWAFB 9916](#) para. 10; Workplace Relations Act Schedule 8, clauses 38 and 44.

<sup>58</sup> [\[2010\] FWAFB 9916](#) para. 10; Workplace Relations Act Part 7 sections 171, 178, 204 and 208.

<sup>59</sup> [\[2010\] FWAFB 9916](#) para. 10; Transitional Act item 3, Schedule 3.

<sup>60</sup> This includes instruments which cover employees also covered by enterprise awards for which an application to modernise has been made; employees also covered by State reference public sector awards for which an application to modernise has been made; or instruments replaced by the SACS modern award.

<sup>61</sup> [\[2010\] FWAFB 9916](#) para. 7.

below).<sup>62</sup> The wages components of the instruments were deemed to be separate APCS instruments.<sup>63</sup>

[54] Awards continued in operation by the Transitional Act as award-based transitional instruments.<sup>64</sup> A number of instruments continue to operate.<sup>65</sup>

### **Continuing schedule 6 instruments**

[55] These instruments also have their origins in federal awards that were in existence before **27 March 2006**;<sup>66</sup> however, they applied to businesses that were not within the scope of the corporations power. Under the Work Choices Act the instruments were known as **Transitional awards**<sup>67</sup> and mostly relate to employees and employers in Western Australia.<sup>68</sup> Transitional awards relevant to referring states became either Division 2A State reference transitional awards or Division 2B State reference transitional awards, see below.

[56] The instruments ceased operating on 27 March 2011<sup>69</sup> and the employees and employers revert to the state industrial system.

### **Division 2A State reference transitional awards**

[57] Like continuing Schedule 6 instruments, these instruments were federal awards made before 27 March 2006 and then, as they were not within the scope of the corporations power, became transitional awards under the Work Choices Act.

[58] Division 2A State reference transitional awards were created on **1 July 2009** and relate exclusively to Victoria, which referred its powers before 27 March 2006. Division 2A State reference transitional awards include enterprise awards, public sector transitional awards and common rules.

[59] These instruments continued in operation by the Transitional Act as award-based transitional instruments.<sup>70</sup> A number of these instruments continue to operate.<sup>71</sup>

### **Division 2B State reference transitional awards**

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<sup>62</sup> [\[2010\] FWAFB 9916](#) para. 7.

<sup>63</sup> [\[2010\] FWAFB 9916](#) para. 7; Workplace Relations Act Part 7 sections 171, 178, 204 and 208.

<sup>64</sup> Transitional Act item 3, Schedule 3; ‘award’ is not defined in the Fair Work Act or Transitional Act. Workplace Relations Act s.4(1) defines ‘award’ to be a pre-reform award.

<sup>65</sup> This includes instruments which cover employees also covered by enterprise awards for which an application to modernise has been made; employees also covered by State reference public sector awards for which an application to modernise has been made; or instruments replaced by the SACS modern award.

<sup>66</sup> [\[2010\] FWAFB 9916](#) para. 7.

<sup>67</sup> Workplace Relations Act Schedule 6, item 6.

<sup>68</sup> [\[2010\] FWAFB 9916](#) para. 12.

<sup>69</sup> Transitional Act item 1, Schedule 20 continues the operation of Workplace Relations Act cl.6, Schedule 6. Other than Western Australia, it is possible that employees and employers that were part of the federal system prior to 27 March 2006, and have not subsequently been referred by a state may also be covered by a transitional award or common rule. This should only be a very small number of employees and employers.

<sup>70</sup> Transitional Act item 2, Schedule 3.

<sup>71</sup> As part of the modernisation and termination of State reference public sector transitional awards process, 57 State reference public sector awards were identified. Most instruments for which an application to modernise have been terminated, however, some made have yet to be determined and a few of those are specific to Victoria.

[60] These instruments were also federal awards made before 27 March 2006 that applied to businesses not within the scope of the corporations power. The instruments became transitional awards under the Workplace Relations Act.

[61] Division 2B State reference transitional awards were created on **1 January 2010** and relate to Division 2B referring states: New South Wales, Tasmania, South Australia and Queensland. Division 2B State reference transitional awards include enterprise awards, public sector transitional awards and common rules.

[62] These instruments continued in operation by the Transitional Act as award-based transitional instruments.<sup>72</sup> Some of these awards continue to operate.<sup>73</sup>

### **Schedule 9 instruments**

[63] These instruments include: transitional APCs and State minimum wage instruments.

[64] Transitional APCs are derived from APCs which existed at 30 June 2009 by the Transitional Act.<sup>74</sup> They generally share coverage with an ‘award-based transitional instrument’.<sup>75</sup>

[65] APCs were notionally created on 26 March 2006 by the Work Choices Act and included the pay rates and classifications scales in minimum wage instruments such as pre-reform federal and state awards.<sup>76</sup> They also include other industrial tribunal decisions and instruments (including minimum wage orders for Victoria).<sup>77</sup>

[66] State minimum wage instruments were created by the Transitional Act<sup>78</sup> and operate where orders, decisions or rulings of a state industrial body made before **1 January 2010** had the effect of providing a higher minimum rate than the national minimum wage order or transitional national minimum wage order.<sup>79</sup> State minimum wages instruments continue to operate where rates for juniors, employees subject to training arrangements or people with disabilities provide for higher wage rates than the national minimum wage order.<sup>80</sup>

### **Transitional Pay Equity Orders**

[67] These are instruments of the Transitional Act which are taken to have been created by the Commission to preserve the effect of equal pay orders issued by the Queensland Industrial

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<sup>72</sup> Transitional Act item 2, Schedule 3.

<sup>73</sup> This includes where they cover: Queensland apprentices/ trainees; employees also covered by enterprise instruments; or employees also covered by State reference public sector awards.

<sup>74</sup> Transitional Act items 5–6, 11, Schedule 9.

<sup>75</sup> Transitional Act items 2(5), Schedule 3. Pre-Fair Work Act awards and NAPSAs did not contain wages, casual loadings and piece rates because they were extracted to create APCs. Other rates in the award or NAPSA remained, and could be varied by the Australian Industrial Relations Commission.

<sup>76</sup> [\[2010\] FWAFB 9916](#) at para. 10 and Workplace Relations Act Part 7 at sections 171, 178, 204 and 208.

<sup>77</sup> [\[2010\] FWAFB 4000](#) at para. 371

<sup>78</sup> Transitional Act item 19, Schedule 9.

<sup>79</sup> Transitional Act item 19, Schedule 9.

<sup>80</sup> There are instances when minimum wage amounts from Division 2B States exceed the amount set nationally pursuant to the Annual Wage Review 2015–16. See Appendix A for more details.

Relations Commission (QIRC) in relation to the social and community services industry in that state.

[68] Two transitional pay equity orders currently operate and relate to Division 2B State awards<sup>81</sup> and Division 2B State reference transitional awards.<sup>82</sup>

### **Copied State awards**

[69] Copied State awards are not technically transitional instruments, however, in annual wage review decisions they are dealt with under the transitional instruments chapter.<sup>83</sup> A Copied State award is the continued operation of certain State awards when a transfer of business occurs in relation to employees of non-national system State public sector employers who transfer their employment to a national system employer.<sup>84</sup>

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<sup>81</sup> Transitional Act subitem 30A(1), Schedule 3A and Explanatory Statement to Regulation No. 2 p 6.

<sup>82</sup> Transitional Act Schedule 3, subitem 43(1), as amended by the *Fair Work (Transitional Provisions and Consequential Amendments) Amendment Regulation 2012 (No. 1)* and Explanatory Statement to Regulation No. 2 p 2.

<sup>83</sup> [\[2013\] FWCFB 4000](#) para. 561, [\[2014\] FWCFB 3500](#), para. 572, [\[2015\] FWCFB 3500](#), para. 536, [\[2016\] FWCFB 3500](#), para. 592.

<sup>84</sup> [\[2013\] FWCFB 4000](#) at para. 556.

## Attachment B—Operation, coverage and termination of transitional instruments

### Categories of minimum wage instruments

Type of instrument	Employees and employers covered by the instrument	Termination of instrument
<b>Division 2B instruments<sup>85</sup> (Item 2, Schedule 3A Transitional Act)</b>		
Division 2B State award	<p>Qld, NSW, SA and Tasmania state reference employees and employers who:</p> <ul style="list-style-type: none"> <li>were not in the federal system prior to 1 January 2010, and</li> <li>were covered by a State award.<sup>86</sup></li> </ul> <p>Includes employees and employers if: employed between 1 January 2010 and 31 December 2010; and if employees were doing the kind of work regulated by the State award before 1 January 2010.<sup>87</sup></p> <p>Employees and employers covered by a Division 2B State award transitioned to modern award coverage on 1 January 2011,<sup>88</sup> unless specifically exempted by regulation<sup>89</sup> or covered by an enterprise award.</p>	1 January 2011, <sup>90</sup> however, some of these awards continue to operate. <sup>91</sup>
Division 2B enterprise award	<p>Qld, NSW, SA and Tasmanian state reference employees and their employers who:</p> <ul style="list-style-type: none"> <li>were not in the federal system prior to 1 January 2010, and</li> <li>were covered by a State award expressed to cover an enterprise.<sup>92</sup></li> </ul> <p>The Commission may decide to make a modern enterprise award to replace the instrument<sup>93</sup> if an application to modernise the instrument is made.</p>	<p>Terminates in the following circumstances:</p> <p>After the Commission makes a modern enterprise award; or</p> <p>If the Commission decides not to make a modern enterprise award, on the</p>

<sup>85</sup> Division 2B instruments include ‘State awards’ and ‘state agreements’, however, this section is limited to ‘State award’ instruments because these can be varied as part of an annual wage review.

<sup>86</sup> Transitional Act item 2(2), Schedule 3A defines ‘State award’.

<sup>87</sup> Transitional Act, item 4, Schedule 3A; Division 2B State awards are taken to be effected by any order, decision or determination of a state industrial body or state court prior to 1 January 2010, including state pay equity orders (see Transitional Act item 3(3), Schedule 3A). Transitional Act item 30A, Schedule 3A, where State pay equity orders were made prior to 15 September 2009 any higher rate of pay applying will continue to apply as a ‘transitional pay equity order’ when the employee becomes covered by a modern award.

<sup>88</sup> Transitional Act item 21, Schedule 3A.

<sup>89</sup> Transitional Regulations, regulation 3A.01 and 3B.02; also see Note 1: Exceptions by regulation below.

<sup>90</sup> Transitional Act item 21, Schedule 3A.

<sup>91</sup> This includes where they cover: Queensland apprentices/ trainees; employees also covered by enterprise instruments; or employees also covered by State reference public sector awards.

<sup>92</sup> Transitional Act item 2(4), Schedule 6, defines ‘enterprise’ to include a single enterprise and multiple enterprises that are franchisees and/or related bodies corporate of the same franchisor.

Type of instrument	Employees and employers covered by the instrument	Termination of instrument
	The instrument terminates if the Commission decides not to replace the instrument with a modern enterprise award, if no application is made, on 31 December 2013. Employees and employers then become covered by either a modern award <sup>94</sup> or a national minimum wage order.	operational date of that decision; or 31 December 2013. <sup>95</sup> There do not appear to be any remaining Division 2B enterprise awards. <sup>96</sup>
<b>Schedule 9 instruments (Items 5(3) and 19(4), Schedule 9 TPCA Act)</b>		
Transitional APCS	<p>Employees and employers covered by an APCS immediately before 1 July 2009.<sup>97</sup> The APCSs became ‘transitional APCSs’ on 1 July 2009.</p> <p>These instruments generally share coverage with an ‘award-based transitional instrument’.<sup>98</sup></p> <p>APCSs include other industrial tribunal decisions and instruments converted to an APCS from 27 March 2006, including minimum wage orders for Victoria.<sup>99</sup></p> <p>Coverage of transitional APCSs continues until a modern award replaces coverage (this also applies to the relevant award-based transitional instrument).<sup>100</sup></p>	<p>The Commission must terminate as soon as practicable after making a modern award or modern enterprise award to replace it.<sup>101</sup></p> <p>Some transitional APCSs still operate.<sup>102</sup></p>

<sup>93</sup> Transitional Act item 29, Schedule 3; ‘Modern award’ is taken to include a modern enterprise award (see Transitional Act item 17, Schedule 6).

<sup>94</sup> Fair Work Act s.143(8).

<sup>95</sup> Transitional Act items 5, 9, Schedule 6.

<sup>96</sup> As at 31 December 2013 there was one application to modernise a Division 2B enterprise award, the Commission decided not to make a modern enterprise award and so it terminated. Any instruments for which an application was not made terminated on 31 December 2013.

<sup>97</sup> APCSs were notionally created on 26 March 2006 from minimum wage instruments which existed in, or transferred to, the federal system. APCSs were derived from pre-reform awards, NAPSAs, state minimum wage orders, etc. (See Workplace Relations Act, subdivision 1 of Division 2, Part 7.) They continue to hold the pay and classifications scales from those instruments by operation of the Transitional Act (see item 5, Schedule 9).

<sup>98</sup> Transitional Act items 2(5), Schedule 3. Pre-Fair Work Act awards and NAPSAs did not contain wages, casual loadings and piece rates because they were notionally extracted to create APCSs. Other rates in the award or NAPSA remained, and could be varied by the AIRC.

<sup>99</sup> Victoria referred their industrial relations powers to the Commonwealth in 1996 and the AIRC made minimum wage orders for employees within work classifications established in the Victorian industrial system (Workplace Relations Act ss.501 – 501A, later repealed by the Work Choices Act). Those orders became APCSs from 26 March 2006. Employers that were not constitutional corporations, and their employees, became covered by an APCS (Workplace Relations Act Division 2, Part 21). Incorporated employers, and their employees, became covered by an APCS derived directly from the pre-reform order subject to the same rules as other APCSs (Workplace Relations Act Division 2, Part 7) (see *Workplace Relations Regulations 2006*, ch 2, reg 7.2(1)).

<sup>100</sup> Transitional Act items 5–6, 11, Schedule 9.

<sup>101</sup> Transitional Act item 3, Schedule 5; item 9, Schedule 6.

<sup>102</sup> This includes instruments which cover employees also covered by enterprise awards where an application to modernise has been made; employees also covered by State reference public sector awards where an application to modernise has been made; or cover employees also covered by the SACS modern award.

Type of instrument	Employees and employers covered by the instrument	Termination of instrument
State minimum wages instrument	<p>Employees and employers from Division 2B states (Qld, NSW, SA and Tasmania) who:</p> <ul style="list-style-type: none"> <li>• are award/agreement-free, and</li> <li>• are not covered by a Division 2B instrument.</li> </ul> <p>If an order, decision or ruling of a state industrial body before 1 January 2010 had the effect of providing a higher minimum rate than the national minimum wage order or transitional national minimum wage order, then the higher ‘state minimum amount’ will apply.<sup>103</sup></p> <p>The Expert Panel cannot vary.<sup>104</sup></p>	<p>The instrument ceases to operate when the national minimum wage order exceeds the ‘state minimum amount’.<sup>105</sup></p> <p>The national minimum wage order is now higher than any of the state minimum amounts for adults.<sup>106</sup></p> <p>State minimum wages for juniors, employees subject to training arrangements or people with disabilities may still provide for higher wage rates.<sup>107</sup></p>
<b>Transitional Instruments:</b> Award-based: Work Choices Act instruments <sup>108</sup> (Item 2, Schedule 3 TPCA Act)		
An award (pre-Fair Work Act award) <sup>109</sup>	<p>Employees and employers who were covered by a pre-reform award immediately before 1 July 2009.<sup>110</sup></p> <p>These instruments were created by the Work Choices Act and wage components were notionally removed (see transitional APCS).<sup>111</sup></p> <p>The coverage of awards only includes employees and employers not covered by a modern award, other than</p>	<p>The Commission must terminate as soon as practicable after a modern award completely replaces the instrument has come into operation.<sup>114</sup></p> <p>A number of instruments</p>

<sup>103</sup> Transitional Act item 19, Schedule 9.

<sup>104</sup> Transitional Act item 19(5), Schedule 9 provides that altering the effect of a state minimum wage instrument is to be done by regulation.

<sup>105</sup> Transitional Act item 19(1), Schedule 9.

<sup>106</sup> Adult rates include: National Minimum Wage Order 2016 at \$672.70 per week. Weekly State minimum wages for adults at 1 January 2010 included: NSW State minimum wage at \$568.20; Qld State minimum wage at \$568.20; SA State minimum wage at \$560.65; Tas State minimum wage at \$574.00.

<sup>107</sup> Some minimum wage amounts in Division 2B States exceed the amount set by the Annual Wage Review 2015–16. For example, the National Minimum Wage Order 2016 set the minimum rate for award/agreement free junior employees under 16 years of age at \$247.60. This is less than the \$312.50 set in the Qld State Wage Case 2009, and the \$280.30 set in the SA State Wage Case 2009.

<sup>108</sup> Transitional instruments include ‘award-based transitional instruments’ and ‘agreement-based transitional instruments’ (see Transitional Act item 2(5), Schedule 3). Instruments listed in this section are limited to ‘award-based transitional instruments’.

<sup>109</sup> Awards (pre-reform awards) were stripped of all matters provided for in the Australian Fair Pay and Conditions Standard (see Workplace Relations Act s.516). Minimum wage rates, casual loadings and piece rates were moved into an APCS derived from the award (see Workplace Relations Act ss.204, 208).

<sup>110</sup> Transitional Act item 3, Schedule 3; ‘award’ is not defined in the Fair Work Act or Transitional Act. Workplace Relations Act s.4(1) defines ‘award’ to be a pre-reform award.

<sup>111</sup> Note: ‘awards’ are not ‘modern awards’.

Type of instrument	Employees and employers covered by the instrument	Termination of instrument
	the <i>Miscellaneous Award 2010</i> . <sup>112</sup> The Expert Panel cannot vary. <sup>113</sup>	continue to operate. <sup>115</sup>
An enterprise award (pre-Fair Work Act award) <sup>116</sup>	Employees and employers who were covered by a pre-reform award that was expressed to cover an enterprise. <sup>117</sup> These employees and employers did not become covered by a modern award after 1 January 2010. <sup>118</sup> The Commission may decide to make a modern enterprise award to replace the instrument if an application to modernise the instrument is made. <sup>119</sup> The instrument terminates if the Commission decides not to replace the instrument with a modern enterprise award or, if no application is made, on 31 December 2013. Employees and employers then become covered by either a modern award <sup>120</sup> or a national minimum wage order. The Expert Panel cannot vary. <sup>121</sup>	Terminates in the following circumstances, whichever occurs first: After the Commission makes a modern enterprise award; or If the Commission decides not to make a modern enterprise award, on the operational date of that decision; or 31 December 2013. <sup>122</sup> A number of these instruments continue to operate. <sup>123</sup>

<sup>114</sup> Transitional Act item 3(1), Schedule 5

<sup>112</sup> Transitional Act item 29, Schedule 3; item 11, Schedule 9.

<sup>113</sup> The Commission may vary terms of an award (pre-reform award) but as they do not contain any form of minimum wages, casual loadings or piece rates, the power is not extended to the Expert Panel (see Transitional Act item 12, Schedule 3).  
The Expert Panel can vary the transitional APCS derived from the award.

<sup>115</sup> This includes instruments which cover employees also covered by enterprise awards for which an application to modernise has been made; employees also covered by State reference public sector awards for which an application to modernise has been made; or instruments replaced by the SACS modern award.

<sup>116</sup> Awards (pre-reform awards) were stripped of all matters provided for in the Australian Fair Pay and Conditions Standard (see Workplace Relations Act s.516). Minimum wage rates, casual loadings and piece rates were set by an APCS derived from the award (see ss.204, 208 Workplace Relations Act).

<sup>117</sup> Transitional Act item 2(2A), Schedule 6.

<sup>118</sup> Fair Work Act s.143(8).

<sup>119</sup> Transitional Act item 29, Schedule 3; 'Modern award' is taken to include a modern enterprise award (see Transitional Act item 17, Schedule 6).

<sup>120</sup> Fair Work Act s.143(8).

<sup>121</sup> The Commission may vary terms of an enterprise award (pre-reform enterprise award) but as they do not contain minimum wages, casual loadings or piece rates the power is not extended to the Expert Panel (see item 12, Schedule 3 Transitional Act).

<sup>122</sup> Transitional Act item 9, Schedule 6.

<sup>123</sup> Applications to modernise enterprise instruments, including pre-reform awards, state reference transitional awards, NAPSAs and preserved collective state agreements applying to a single enterprise, could be made under item 4, Schedule 6 of the Transitional Act. The Commission received 141 applications to modernise or terminate enterprise instruments. Where no application was made by 31 December 2013 the relevant instrument was terminated. Most applications have been finalised, however, some have yet to be determined.

<b>Type of instrument</b>	<b>Employees and employers covered by the instrument</b>	<b>Termination of instrument</b>
NAPSA <sup>124</sup>	<p>Employees and employers who entered the federal system on 27 March 2006 and who were previously covered by a State award.</p> <p>These employees and employers became covered by a NAPSA.<sup>125</sup> (Like pre-reform awards, these are notional instruments and wage components were removed by the Work Choices Act. See transitional APCS for wage components).</p> <p>The coverage of awards only includes employees and employers that are not covered by a modern award, other than the <i>Miscellaneous Award 2010</i>.<sup>126</sup></p> <p>The Expert Panel cannot vary.<sup>127</sup></p>	<p>Terminates when the Commission terminates the NAPSA after modern award intended to replace the NAPSA comes into operation,<sup>128</sup> or 1 January 2014.<sup>129</sup></p> <p>A number of instruments continue to operate.<sup>130</sup></p>
Enterprise NAPSA <sup>131</sup>	<p>Employees and employers that entered the federal system on 27 March 2006 and that were previously covered by a State award expressed to cover an enterprise.</p> <p>These employees and employers became covered by a NAPSA.<sup>132</sup> These employees and employers did not become covered by a modern award on 1 January 2010.<sup>133</sup></p> <p>The Commission may decide to make a modern enterprise award to replace the instrument if an application to modernise the instrument is made.<sup>134</sup></p> <p>The instrument terminates if the Commission decides not to replace the instrument with a modern enterprise award or, if no application is made, on 31 December</p>	<p>Terminates in the following circumstances, whichever occurs first:</p> <p>After the Commission makes a modern enterprise award,<sup>137</sup> or</p> <p>If the Commission decides not to make a modern enterprise award, on the operational date of that decision,<sup>138</sup> or</p> <p>31 December 2013.</p> <p>There do not appear to</p>

<sup>124</sup> NAPSA preserved State awards as they existed at 26 March 2006 except for matters provided for in the Australian Fair Pay and Conditions Standard (see Workplace Relations Act clauses 38, 44, Schedule 8). Minimum wage rates, casual loadings and piece rates were set by an APCS derived from the State award (see Workplace Relations Act ss.204, 208).

<sup>125</sup> Transitional Act item 3, Schedule 3.

<sup>126</sup> Transitional Act item 29, Schedule 3; Transitional Act item 11, Schedule 9.

<sup>127</sup> Transitional Act item 10, Schedule 3 the Commission may only vary a NAPSA, on application of a party, to remove ambiguity or uncertainty.

<sup>128</sup> Transitional Act item 3(2), Schedule 5.

<sup>129</sup> Transitional Act item 20(1), Schedule 3.

<sup>130</sup> This includes instruments which cover employees who are also covered by enterprise awards for which an application to modernise has been made; employees also covered by State reference public sector awards for which an application to modernise has been made; or instruments replaced by the SACS modern award.

<sup>131</sup> Workplace Relations Act clauses 38, 44, Schedule 8, NAPSA preserved State awards as they existed at 26 March 2006, except for matters provided for in the Australian Fair Pay and Conditions Standard. Workplace Relations Act ss.204, 208, minimum wage rates, casual loadings and piece rates were set by an APCS derived from the State award.

<sup>132</sup> Transitional Act item 3, Schedule 3.

<sup>133</sup> Fair Work Act s. 143(8).

<sup>134</sup> Transitional Act item 29(1), Schedule 3; 'Modern award' is taken to include a modern enterprise award (see Transitional Act item 17, Schedule 6).

Type of instrument	Employees and employers covered by the instrument	Termination of instrument
	<p>2013. Employees and employers then become covered by either a modern award<sup>135</sup>, or a national minimum wage order.</p> <p>The Expert Panel cannot vary.<sup>136</sup></p>	<p>be any remaining enterprise NAPSAs.</p>
<p>State reference common rule</p>	<p>Employees and employers:</p> <ul style="list-style-type: none"> <li>• who were covered by a federal common rule prior to 1 July 2009 (only Victorian state reference employers and employees), or</li> <li>• who came within the coverage terms of a state reference common rule by 31 December 2009.<sup>139</sup></li> </ul> <p>From 1 January 2010, these instruments only cover employees and employers that are not covered by a modern award (other than the <i>Miscellaneous Award 2010</i>).<sup>140</sup></p> <p>Victorian public sector employees and employers previously covered by a common rule underpinned by a transitional award will be covered by a state reference common rule until it is modernised into a state reference public sector modern award.<sup>141</sup></p>	<p>The Commission must terminate as soon as practicable after modern awards replacing the instruments comes into operation, or when a state reference public sector modern award completely replaces the common rule.<sup>142</sup></p> <p>A number of these instruments continue to operate.<sup>143</sup></p>

<sup>137</sup> Transitional Act item 5(2) and 9(4), Schedule 6.

<sup>138</sup> Transitional Act item 9, Schedule 6.

<sup>135</sup> Fair Work Act s.143(8).

<sup>136</sup> Transitional Act item 10, Schedule 3 the Commission may only vary a NAPSA, on application of a party, to remove ambiguity or uncertainty.

<sup>139</sup> Transitional Act item 2A(2), Schedule 3.

<sup>140</sup> Transitional Act item 29, Schedule 3.

<sup>141</sup> Transitional Act item 2(1), Schedule 6A; Fair Work Act s.143(10) provides that a modern award other than a State reference public sector modern award cannot be expressed to cover the same employees and employers as a State reference public sector transitional award (including State reference common rules). For example, social and community services.

<sup>142</sup> Transitional Act item 3(2), Schedule 5. Transitional Act item 10, Schedule 6A provides for termination as part of the State reference public sector award modernisation process. A State reference public sector transitional award is taken to include a State reference common rule that covers public sector employees and employers (see Transitional Act item 2, Schedule 6A).

<sup>143</sup> As part of the modernisation and termination of state reference public sector transitional awards process, 57 State reference public sector awards were identified. Most instruments for which an application to modernise was made have been terminated, however, some have yet to be determined and a few of those are subject to a common rule declaration specific to Victoria. See [\[2014\] FWCFB 3652](#) for explanation of Common rules.

Type of instrument	Employees and employers covered by the instrument	Termination of instrument
<b>Transitional instruments:</b> Award based: State reference transitional awards <sup>144</sup> (Item 2, Schedule 3 TPCA Act)		
Division 2A State reference transitional award	<p>Victorian state reference employees employed by Victorian state reference employers that were not constitutional corporations and:</p> <ul style="list-style-type: none"> <li>• were referred to the Commonwealth in 1996,<sup>145</sup></li> <li>• were covered by a federal award (including a ‘transitional Victorian reference award’) at 26 March 2006, and</li> <li>• was either covered by a transitional award from 27 March 2006 or became bound by that award before 31 December 2009.<sup>146</sup></li> </ul> <p>For example, transitional awards continued to cover employment in the pastoral and social and community sectors.<sup>147</sup></p> <p>The instrument may be the underlying award for a state reference common rule (see above). From 1 January 2010, those instruments only cover employees and employers that are not covered by a modern award (other than the <i>Miscellaneous Award 2010</i>).<sup>148</sup></p>	<p>The Commission must terminate as soon as practicable after a modern award completely replaces the instrument.<sup>149</sup></p> <p>A number of these instruments continue to operate.<sup>150</sup></p>
Division 2A State reference transitional enterprise award	<p>Victorian state reference employees and their employers that were not constitutional corporations and:</p> <ul style="list-style-type: none"> <li>• were referred to the Commonwealth in 1996,<sup>151</sup></li> <li>• were still covered by a federal award expressed to cover an enterprise at 26 March 2006, and</li> <li>• from 27 March 2006 became covered by a transitional award.<sup>152</sup></li> </ul> <p>These are most likely to be agricultural enterprises. The</p>	<p>Terminates in the following circumstances, whichever occurs first:</p> <p>After the Commission makes a modern enterprise award,<sup>155</sup></p> <p>If the Commission decides not to make a modern enterprise</p>

<sup>144</sup> Transitional Act item 2(5), Schedule 3 Transitional instruments include ‘award-based transitional instruments’ and ‘agreement-based transitional instruments’. Instruments listed in this section are limited to ‘award-based transitional instruments’ because these can be varied as part of an annual wage review.

<sup>145</sup> *Commonwealth Powers (Industrial Relations) Act 1996* (Vic).

<sup>146</sup> Transitional Act items 2A(1)-(1A), Schedule 3; Workplace Relations Act clause 2, Schedule 6 defines the meaning of ‘transitional award’ and is extended in Part 7 of that schedule to include a ‘transitional Victorian reference award’. A ‘Victorian reference award’ was a federal award made under the Victorian state referral of industrial powers in 1996. After 26 March 2006, the ‘transitional Victorian reference award’ continued to cover employees who were employed by employers that were not constitutional corporations (Workplace Relations Act clause 73, Schedule 6). The AIRC had power to vary these instruments, as with transitional awards.

<sup>147</sup> Explanatory Memorandum, *Fair Work Amendment (State Referrals and Other Measures) Bill 2009* at vi.

<sup>148</sup> Transitional Act item 29, Schedule 3.

<sup>149</sup> Transitional Act item 3(2), Schedule 5.

<sup>150</sup> Some Division 2A State reference transitional awards may still exist where they are related to awards that have not been terminated under the termination of instruments process.

<sup>151</sup> *Commonwealth Powers (Industrial Relations) Act 1996* (Vic).

<sup>152</sup> Transitional Act item 2(2A), Schedule 6.

Type of instrument	Employees and employers covered by the instrument	Termination of instrument
	<p>employees and employers did not become covered by a modern award on 1 January 2010.<sup>153</sup></p> <p>The Commission may decide to make a modern enterprise award to replace the instrument if an application to modernise the instrument is made.<sup>154</sup></p>	<p>award, on the operational date of that decision,<sup>156</sup></p> <p>31 December 2013.</p> <p>There do not appear to be any remaining.<sup>157</sup></p>
<p>Division 2A State reference public sector transitional award (including common rules)</p>	<p>Victorian state reference public sector employees and their employers that were:</p> <ul style="list-style-type: none"> <li>• referred to the Commonwealth in 1996<sup>158</sup>, and</li> <li>• not constitutional corporations, and</li> <li>• covered by a federal award or federal common rule (with an underlying federal award).<sup>159</sup></li> </ul> <p>These employees and employers do not become covered by a modern award on 1 January 2010.<sup>160</sup></p> <p>The Commission is obliged to modernise or terminate these instruments if they are still in operation after 31 December 2013.<sup>161</sup></p> <p>The Commission may decide to make a state reference public sector modern award if an application to modernise the instrument is made.<sup>162</sup></p>	<p>Terminates in the earlier of the following circumstances:</p> <p>when a state reference public sector modern award completely replaces the instrument.<sup>163</sup> or</p> <p>the operational date of any decision by the Commission to terminate the instrument.<sup>164</sup></p> <p>A number of these instruments continue to operate.<sup>165</sup></p>

<sup>155</sup> Transitional Act item 5(2) and 9(4), Schedule 6.

<sup>153</sup> Fair Work Act s.143(8).

<sup>154</sup> Transitional Act item 29 (1), Schedule 3; ‘Modern award’ is taken to include a modern enterprise award (see Transitional Act item 17, Schedule 6).

<sup>156</sup> Transitional Act item 9, Schedule 6.

<sup>157</sup> [2014] FWCFB 3652 dealt with the only application that may have related to an instrument of this type. The instrument was found not to be an enterprise instrument and the application was dismissed.

<sup>158</sup> *Commonwealth Powers (Industrial Relations) Act 1996* (Vic).

<sup>159</sup> Transitional Act item 2, Schedule 6A; ‘Public sector employee’ and ‘public sector employer’ for a Division 2A State reference is defined in Fair Work Act s.30A.

<sup>160</sup> Fair Work Act s.143(10).

<sup>161</sup> Transitional Act item 6, Schedule 6A.

<sup>162</sup> Transitional Act item 29, Schedule 3; ‘Modern award’ is taken to include a State reference public sector modern award (see Transitional Act item 20, Schedule 6A). A state reference public sector transitional award expressed to cover an enterprise is excluded from the definition of ‘enterprise instrument’ and can only be modernised as part of the public sector award modernisation in Schedule 6A to the Transitional Act (see item 2(2), Schedule 6).

<sup>163</sup> Transitional Act item 10(1), Schedule 6A.

<sup>164</sup> Transitional Act item 5, Schedule 6A.

<sup>165</sup> As part of the modernisation and termination of state reference public sector transitional awards process, 57 State reference public sector awards were identified. Most instruments for which an application to modernise have been terminated, however, some made have yet to be determined and a few of those are specific to Victoria.

Type of instrument	Employees and employers covered by the instrument	Termination of instrument
Division 2B State reference transitional award <sup>166</sup>	<p>Qld, NSW, SA and Tasmanian state reference employees and their employers who were not constitutional corporations and:</p> <ul style="list-style-type: none"> <li>• were covered by a federal award at 26 March 2006, and</li> <li>• was either covered by a transitional award from 27 March 2006 or became bound by that award before 31 December 2009.<sup>167</sup></li> </ul> <p>For example, transitional awards continued to cover employment in the pastoral and social and community sectors.<sup>168</sup></p> <p>This will only include those of the above employees and employers that are not included within the coverage terms of a modern award (other than the <i>Miscellaneous Award 2010</i>).<sup>169</sup></p>	<p>The Commission must terminate as soon as practicable after a modern completely replaces the instrument.<sup>170</sup></p> <p>Some of these awards may still exist.<sup>171</sup></p>
Division 2B State reference transitional enterprise award	<p>Qld, NSW, SA and Tasmanian state reference employees and their employers who were not constitutional corporations and:</p> <ul style="list-style-type: none"> <li>• were still covered by a federal award expressed to cover an enterprise at 26 March 2006, and</li> <li>• from 27 March 2006, became covered by a transitional award.<sup>172</sup></li> </ul> <p>Such enterprises are most likely to be farm-based enterprises. These employees and employers do not become covered by a modern award on 1 January 2010.<sup>173</sup></p> <p>The Commission may decide to make a modern enterprise award to replace the instrument if an application to modernise the instrument is made.<sup>174</sup></p>	<p>Terminates in the following circumstances whichever occurs first:</p> <p>After the Commission makes a modern enterprise award;<sup>175</sup></p> <p>If the Commission decides not to make a modern enterprise award, on the operational date of that decision;<sup>176</sup></p> <p>31 December 2013.</p>

<sup>166</sup> A Division 2B state reference transitional award is taken to be affected by a ‘transitional pay equity order’. The transitional pay equity order applies any higher rate of pay that would have been payable as a result of a state pay equity order by a state industrial body. This continues to apply when a modern award covers the employee and employer (see Transitional Act item 43, Schedule 3).

<sup>167</sup> Transitional Act items 2A(1)-(1A), 3, Schedule 3.

<sup>168</sup> Explanatory Memorandum, *Fair Work Amendment (State Referrals and Other Measures) Bill 2009* at vi.

<sup>169</sup> Transitional Act item 29(1), Schedule 3.

<sup>170</sup> Transitional Act item 3(2), Schedule 5.

<sup>171</sup> This includes where they cover: Queensland apprentices/ trainees; employees also covered by enterprise instruments; or employees also covered by State reference public sector awards.

<sup>172</sup> Transitional Act item 2(2A), Schedule 6.

<sup>173</sup> Fair Work Act s.143(8).

<sup>174</sup> Transitional Act item 29(1), Schedule 3; ‘Modern award’ is taken to include a modern enterprise award (see Transitional Act item 17, Schedule 6).

<sup>175</sup> Transitional Act item 5(2) and 9(4), Schedule 6.

<sup>176</sup> Transitional Act item 9, Schedule 6.

Type of instrument	Employees and employers covered by the instrument	Termination of instrument
		There do not appear to be any remaining. <sup>177</sup>
Division 2B State reference public sector transitional award <sup>178</sup>	<p>Qld, NSW, SA and Tasmanian state reference public sector employees and their employers that were not constitutional corporations and were covered by a federal award or federal common rule (with an underlying federal award).<sup>179</sup></p> <p>These employees and employers do not become covered by a modern award on 1 January 2010.<sup>180</sup></p> <p>The Commission is obligated to modernise or terminate these instruments if they are still in operation after 31 December 2013.<sup>181</sup></p> <p>The Commission may decide to make a state reference public sector modern award if an application to modernise the instrument is made.<sup>182</sup></p>	<p>Terminates in the earlier of the following circumstances:</p> <p>when a state reference public sector modern award completely replaces the instrument,<sup>183</sup> or the operational date of any decision by the Commission to terminate the instrument.<sup>184</sup></p> <p>A number of these instruments continue to operate.<sup>185</sup></p>

<sup>177</sup> Transitional Act item 4, Schedule 6 applications to modernise enterprise instruments, including pre-reform awards, state reference transitional awards, NAPSAs and preserved collective state agreements applying to a single enterprise, could be made. The Commission received 141 applications to modernise or terminate enterprise instruments. Most applications have been finalised, however, some have yet to be determined.

<sup>178</sup> No Division 2B State has referred public sector employees and employers (Division 2B public sector employee and employer are defined in s.30K Fair Work Act). It is unlikely that any employees or employers would be covered by a Division 2B State reference public sector transitional award. State government-owned or controlled entities and their employees may be national system employees and national system employers through the corporations power. Those employees and employers would be covered by ‘an award’ (see above) and/or an APCS. State government-owned or controlled entities that were not constitutional corporations and their employees who were bound by federal awards prior to 26 March 2006, and not referred into the Fair Work system, would be covered by a transitional award (see ‘continuing Schedule 6’ instruments).

<sup>179</sup> Transitional Act item 2, Schedule 6A.

<sup>180</sup> Fair Work Act s.143(10).

<sup>181</sup> Transitional Act item 6, Schedule 6A.

<sup>182</sup> Transitional Act item 29(1), Schedule 3. ‘Modern award’ is taken to include a State reference public sector modern award (see Transitional Act item 20, Schedule 6A). A state reference public sector transitional award expressed to cover an enterprise is excluded from the definition of ‘enterprise instrument’ and can only be modernised as part of the public sector award modernisation in Schedule 6A to the Transitional Act (see item 2(2), Schedule 6).

<sup>183</sup> Transitional Act item 10(1), Schedule 6A.

<sup>184</sup> Transitional Act item 5, Schedule 6A.

<sup>185</sup> As part of the modernisation and termination of state reference public sector transitional awards process, 57 State reference public sector awards were identified. Most instruments for which an application to modernise have been terminated, however, some may have yet to be determined and a few of those are specific to states other than Victoria.

Type of instrument	Employees and employers covered by the instrument	Termination of instrument
<b>Continuing Schedule 6 instruments<sup>186</sup> (Item 1(3), Schedule 20 TPCA Act)</b>		
Transitional awards	<p>Employees and employers (mostly in Western Australia) that:</p> <ul style="list-style-type: none"> <li>• were bound by a federal award prior to 27 March 2006, and</li> <li>• were not included in the federal system under the corporations power, and</li> <li>• have not been included in the national system by a state referral.</li> </ul> <p>Covered by transitional awards based on the constitutional conciliation and arbitration power.<sup>187</sup> The instruments ceased operating on 27 March 2011<sup>188</sup> and the employees and employers revert to the state industrial system.</p>	27 March 2011 or at an earlier date by order of the Commission. <sup>189</sup>
Common rules	<p>Federal common rules under Schedule 6 of the WR Act after 27 March 2006 covered employees of employers in Victoria that were not constitutional corporations.</p> <p>All employees and employers covered by a federal common rule at 1 July 2009 became covered a state reference common rule (see ‘award-based transitional instruments’) because Victoria referred all employers and employees (with some limited exceptions) to the national system.</p>	27 March 2011 or by an order of the Commission revoking the underlying transitional award. <sup>190</sup>

<sup>186</sup> Schedule 6 Workplace Relations Act instruments, continued in operation by Transitional Act item 1, Schedule 20, includes award-based and agreement-based instruments. Instruments listed in this section are limited to award-based instruments.

<sup>187</sup> A ‘transitional award’ is continued in operation based on the conciliation and arbitration power underpinning parts of the Workplace Relations Act. The Fair Work Act and Transitional Act do not rely on the conciliation and arbitration power to any extent. State reference transitional awards are intended to put employers and employees subject to the conciliation and arbitration power within the scope of the state referrals underpinning the two acts. Those employees and employers are transitioned on to modern awards through various modernisation processes in the Transitional Act.

<sup>188</sup> Transitional Act item 1, Schedule 20 continues the operation of Workplace Relations Act cl.6, Schedule 6. Other than Western Australia, it is possible that employees and employers that were part of the federal system prior to 27 March 2006, and have not subsequently been referred by a state may also be covered by a transitional award or common rule. This should only be a very small number of employees and employers.

<sup>189</sup> Workplace Relations Act cl.6, Schedule 6 (continued in operation by schedule 20 of the Transitional Act).

<sup>190</sup> Workplace Relations Act clause 82, Schedule 6.

Type of instrument	Employees and employers covered by the instrument	Termination of instrument
<b>Transitional Pay Equity orders: (Item 30A, Schedule 3A TPCA Act and Item 43, Schedule 3 TPCA Act)</b>		
Transitional Pay Equity Order 1 relates to Division 2B State awards	<p>Qld employees (affected employees)<sup>191</sup> and employers who:</p> <ul style="list-style-type: none"> <li>• were covered by certain Division 2B State awards, the award applied to them and then terminated,<sup>192</sup> and</li> <li>• were subject to a pay equity order<sup>193</sup> made before 1 September 2009 by a state Industrial Relations Commission determining base rates of pay, and</li> <li>• are covered by a modern award which applies to them after the termination time.</li> </ul> <p>Expert Panel required to review and may vary to the extent that it is not derived from the <i>Queensland Community Services and Crisis Assistance Award – State 2008</i>.<sup>194</sup></p>	Transitional Pay Equity Order 1 ceases to have effect on 1 December 2020 when the rates converge with the rates in the SACS modern award. <sup>195</sup>
Transitional Pay Equity Order 2 relates to Division 2B State reference transitional awards	<p>Qld employees of prescribed employers<sup>196</sup> who were not constitutional corporations and:</p> <ul style="list-style-type: none"> <li>• received supplementary funding from the Qld Government in relation to the prescribed pay equity order,<sup>197</sup> and</li> <li>• either the <i>Social and Community Services (Queensland) Award 2001</i> [Transitional] or the <i>Crisis Assistance Supported Housing (Queensland) Award 1999</i> [Transitional] applied to them, and</li> <li>• are covered by a modern award and the modern award applies to them.</li> </ul> <p>Expert Panel cannot vary.<sup>198</sup></p>	Transitional Pay Equity Order 2 ceases to have effect on 1 December 2020 when the rates converge with the rates in the SACS modern award. <sup>199</sup>

<sup>191</sup> Transitional Act item 30A(2)(a) and 30A(4), Schedule 3A, these are employees who were employed at or after the Division 2B referral commencement (the termination time).

<sup>192</sup> Transitional Act item 30A(4)(b), Schedule 3A, this includes employees who became employed after the termination time.

<sup>193</sup> Transitional Act item 30A(2)(b)(iii), Schedule 3A, the determination must have been made wholly or partly on the ground of work value, pay equity or equal remuneration.

<sup>194</sup> Transitional Regulations regs 3A.01B modifies the Transitional Act item 30A(2)(b)(iii), Schedule 3A to insert item 30D which provides that Division 3, Part 2-6 of the Fair Work Act applies except for section 292; [2013] FWCFB 4000, para 558, these are most likely to be groups of disability support workers, dental assistants and employees engaged in the provision of children’s services.

<sup>195</sup> Transitional Act item 30A(7), Schedule 3A, the modern award has effect so far as it requires an employer to pay a base rate that is equal or higher than the base rate of pay in the transitional pay equity order. Item 30C provides for the continued variation of the Transitional Pay Equity Order until the Annual Wage Review 2019–20.

<sup>196</sup> Transitional Regulations regs 3.03B; these are employers to whom the SACS award applies and previously under application of the *Social and Community Services (Queensland) Award 2001* [Transitional] or the *Crisis Assistance Supported Housing (Queensland) Award 1999* [Transitional].

<sup>197</sup> Transitional Regulations regs 3.03C 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*.

Type of instrument	Employees and employers covered by the instrument	Termination of instrument
<b>Not technically a transitional instrument</b> Copied State instruments: (Part 6–3A Fair Work Act)		
Copied State awards	<p>Employees and employers that:</p> <ul style="list-style-type: none"> <li>• are employees of a non-national system state public sector employer, and</li> <li>• a transfer of employment occurs to a national system employer.<sup>200</sup></li> </ul> <p>Terms and conditions are transferred by creating a ‘copied State instrument’ which includes ‘copied State awards’.<sup>201</sup></p> <p>Copied State awards contain the same terms and conditions as the original State award as in force immediately before the termination time of a transferring employee.<sup>202</sup></p> <p>Expert Panel required to review and may vary.<sup>203</sup></p>	<p>The instrument ceases to apply:</p> <p>After five years starting on the day the employee’s termination time occurred,<sup>204</sup> or</p> <p>If the Regulations allow, in accordance with an order of the Commission extending the period.<sup>205</sup></p> <p>A small number of copied State awards exist,<sup>206</sup> however, it is unclear how many.</p>

### Note 1: Exceptions by regulation

**[70]** The Transitional Regulations create some exceptions to modern award coverage. If the award-based transitional instrument sets a competency-based training arrangement, or relates exclusively to the provision of tools for an apprentice, then it will continue to cover those employees and employers (and any related transitional APCs) after 1 January 2010, including for employment commenced after that date.<sup>207</sup>

**[71]** Division 2B State awards that cover similar competency-based arrangements and tool provisions will continue to cover employers and employees after 1 January 2011. Employees, and their respective employer, employed into those arrangements after 1 January 2011 will also be covered by the Division 2B State award.<sup>208</sup>

<sup>198</sup> Transitional Regulations regs 3.03H modifies the Transitional Act item 43(8), Schedule 3 to insert item 44 which provides that the pay equity order is taken to be varied as part of the annual wage review if the SACS modern award. This is the case for any annual wage review decision from 2012–13 to 2019–20.

<sup>199</sup> Transitional Act item 43(9), Schedule 3, the modern award has effect so far as it requires an employer to pay a base rate that is equal or higher than the base rate of pay in the transitional pay equity order. Item 45(2) provides for the continued variation of the Transitional Pay Equity Order until the Annual Wage Review 2019–20.

<sup>200</sup> Fair Work Act, s. 768AD(1).

<sup>201</sup> Fair Work Act, s. 768AH(a).

<sup>202</sup> Fair Work Act, s. 768AI(1).

<sup>203</sup> Fair Work Act, s 768BY and 768AW(b) which provides that Part 5 of Schedule 9 TPCA Act applies to copied State awards, item 20 (which is in Part 5) of the TPCA Act deals variation of Division 2B State awards as part of the annual wage review.

<sup>204</sup> Fair Work Act, s. 768AO(2)(a).

<sup>205</sup> Fair Work Act, s. 768AO(2)(a).

<sup>206</sup> See [\[2014\] FWC 4137](#); [\[2014\] FWC 4132](#) and [\[2013\] FWC 6894](#).

<sup>207</sup> Transitional regulations, reg 3B.02.

<sup>208</sup> Transitional regulations, reg 3A.01; most competency-based training progression this relates to is found in Queensland State awards affected by the *Order—Apprentices’ and Trainees’ Wages and Conditions* (Queensland Government

[72] Green army and Community Jobs Plan participant entitlements previously preserved have now expired.<sup>209</sup>

**Note 2: Transitional provisions relevant to payments to employees under cl. 5 of the *Social, Community and Disability Services Industry Equal Remuneration Order 2012***

[73] The 2012 ERO preserved the operation of a number of transitional instruments related to the SACS modern award<sup>210</sup> and the Panel must review and may make an order varying these instruments.<sup>211</sup> Schedule A to the SACS modern award contains transitional provisions, which deal with the interaction between transitional minimum wage instruments and the SACS modern award regime.

[74] The transitional provisions deal with situations such as where the existing minimum wage, loadings and penalties or allowances under transitional instruments are higher or lower than that provided for in the SACS modern award. These provisions were to expire by 1 July 2011, however, following an application by the ASU, the phasing-in provisions were altered so as not to disadvantage employees who may be affected by the outcome of the Equal Remuneration Case 2010–12.<sup>212</sup>

[75] Schedule A of the SACS modern award now provides that, in relation to employees in the Social and Community Services and Crisis Accommodation classification streams (these are also the employees covered by the 2012 ERO), employers are to pay no less than the minimum rates provided for in the SACS modern award from 1 July 2012 onwards.

[76] In relation to those transitional instruments that paid more than the minimum rates in the SACS Award, the amended SACS modern award set-off provisions ceased to operate from 1 July 2014.

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*Departments and Certain Government Entities) 2000 (Qld), Order—Apprentices’ and Trainees’ Wages and Conditions (Excluding Certain Queensland Government Entities) 2003 (Qld) and Order—Supply of Tools to Apprentices 1998 (Qld).*

<sup>209</sup> Transitional regulations, reg 3.04.

<sup>210</sup> [\[MA000100\]](#).

<sup>211</sup> Transitional Act, items 10 (1) and 20 (1) of Schedule 9 and item 12A(5) of Schedule 3.

<sup>212</sup> [\[2011\] FWAFB 8800](#).

## Attachment C—Technical Operation of Transitional Pay Equity Orders

[77] The technical operation of transitional pay equity orders is largely explained in Explanatory Statement to the *Fair Work (Transitional Provisions and Consequential Amendments) Amendment Regulation 2012 (No. 2)* (Regulation No. 2).<sup>213</sup>

[78] There are currently two transitional pay equity orders known as transitional pay equity order 1 (TPEO 1) and transitional pay equity order 2 (TPEO 2). The technical operation of each of the transitional pay equity orders is set out below.

[79] The orders operate to preserve the effect of an equal pay order issued by the QIRC on 12 June 2009 in relation to the social and community services industry in that state.<sup>214</sup>

[80] The Explanatory Statement to the Regulation No. 2<sup>215</sup> states that the rates in the transitional pay equity orders are intended to converge with rates payable under the SACS modern award (as affected by the ERO) by 1 December 2020.<sup>216</sup>

### Transitional pay equity order 1

[81] On 1 January 2010 the Commission was deemed to have made TPEO 1.<sup>217</sup> TPEO 1 continues the entitlement of covered employees to rates of pay under Division 2B State awards for which base rates of pay were determined by a pay equity order made by a State Industrial Relations Commission.

[82] TPEO 1 affects Queensland employees (primarily in the social and community services industry) so that they continue to receive the higher rates of pay under state pay equity orders rather than moving on to the rates in the SACS modern award.<sup>218</sup>

[83] Regulation No. 2 applies the Queensland State Wage Case increases in 2010, 2011 or 2012 to TPEO 1 which otherwise would not have been subject to minimum wage adjustments by the QIRC or the Commission.<sup>219</sup>

[84] The Explanatory Statement to the Regulation No. 2<sup>220</sup> states that the power to review TPEO 1 is intended to apply to rates of pay derived from the following Division 2B state awards:

- *Disability Support Workers Award – State (Queensland) 2003*,
- *Dental Assistants (Private Practice) Award – State (Queensland)*,
- *Children’s Services Award – State (Queensland) 2006*.<sup>221</sup>

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<sup>213</sup> Explanatory Statement to Regulation No. 2.

<sup>214</sup> Explanatory Statement to Select Legislative Instrument 2012 No.270; Explanatory Statement to Regulation No. 2.

<sup>215</sup> Explanatory Statement to Regulation No. 2.

<sup>216</sup> Explanatory Statement to Regulation No. 2, page 2.

<sup>217</sup> Transitional Act subitem 30A(1), Schedule 3A.

<sup>218</sup> Explanatory Statement to Regulation No. 2, page 1.

<sup>219</sup> Explanatory Statement to Regulation No. 2, pp 1–2.

<sup>220</sup> Explanatory Statement to Regulation No. 2.

<sup>221</sup> Explanatory Statement to Regulation No. 2 Attachment A, page 2.

[85] The Commission may make a determination varying TPEO 1 to the extent that it is not derived from the *Queensland Community Services and Crisis Assistance Award – State 2008* which is a Division 2B State reference transitional award.<sup>222</sup>

[86] The transitional regulations provide that any adjustment to the SACS award as part of an annual wage review effectively applies TPEO 1 to the extent it relates to the *Queensland Community Services and Crisis Assistance Award – State 2008*.<sup>223</sup>

[87] TPEO 1 ceases to have effect on 1 December 2020 when the rates converge with the rates in the SACS modern award.<sup>224</sup>

## **Transitional pay equity order 2**

[88] TPEO 2 was deemed to be made by the Commission on 27 March 2011.<sup>225</sup> The effect of TPEO 2 is similar to that of TPEO 1, except that it applies to employees of specified employers who had been entitled to base rates of pay under Division 2B State reference transitional awards affected by a pay equity order.

[89] TPEO 2 operates for the benefit of employees who were covered by two Division 2B State reference transitional awards:

- the *Social and Community Services (Queensland) Award 2001* [Transitional], and
- the *Crisis Assistance Supported Housing (Queensland) Award 1999* [Transitional].<sup>226</sup>

[90] If Queensland had not referred its state industrial relations powers, employees covered by the awards listed above would have reverted to the state system on 27 March 2011<sup>227</sup> and been covered by the *Queensland Community Services and Crisis Assistance Award – State 2008* (including the QIRC pay equity order applying to that award).

[91] TPEO 2 includes Queensland State Wage Case increases from 2010 and 2011, Regulation No. 2 also applies the Queensland State Wage Case increases of 2012 to TPEO 2.<sup>228</sup>

[92] TPEO 2 ceases to have effect on 1 December 2020 when the rates converge with the rates in the SACS modern award.<sup>229</sup>

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<sup>222</sup> Transitional Regulations regs 3A.01B modifies the Transitional Act item 30A(2)(b)(iii), Schedule 3A to insert item 30D which provides that Division 3, Part 2-6 of the Fair Work Act applies except for section 292.

<sup>223</sup> Transitional Regulations regs 3A.01B modifies the Transitional Act item 30C.

<sup>224</sup> Transitional Act item 30A(7), Schedule 3A, the modern award has effect so far as it requires an employer to pay a base rate that is equal or higher than the base rate of pay in the transitional pay equity order. Item 30C provides for the continued variation of the Transitional Pay Equity Order until the Annual Wage Review 2019–20.

<sup>225</sup> Transitional Act Schedule 3, subitem 43(1), as amended by the *Fair Work (Transitional Provisions and Consequential Amendments) Amendment Regulation 2012 (No. 1)*.

<sup>226</sup> Explanatory Statement to Regulation No. 2.

<sup>227</sup> Explanatory Statement to the Regulation No. 2, p 2.

<sup>228</sup> Explanatory Statement to the Regulation No. 2, p 2.

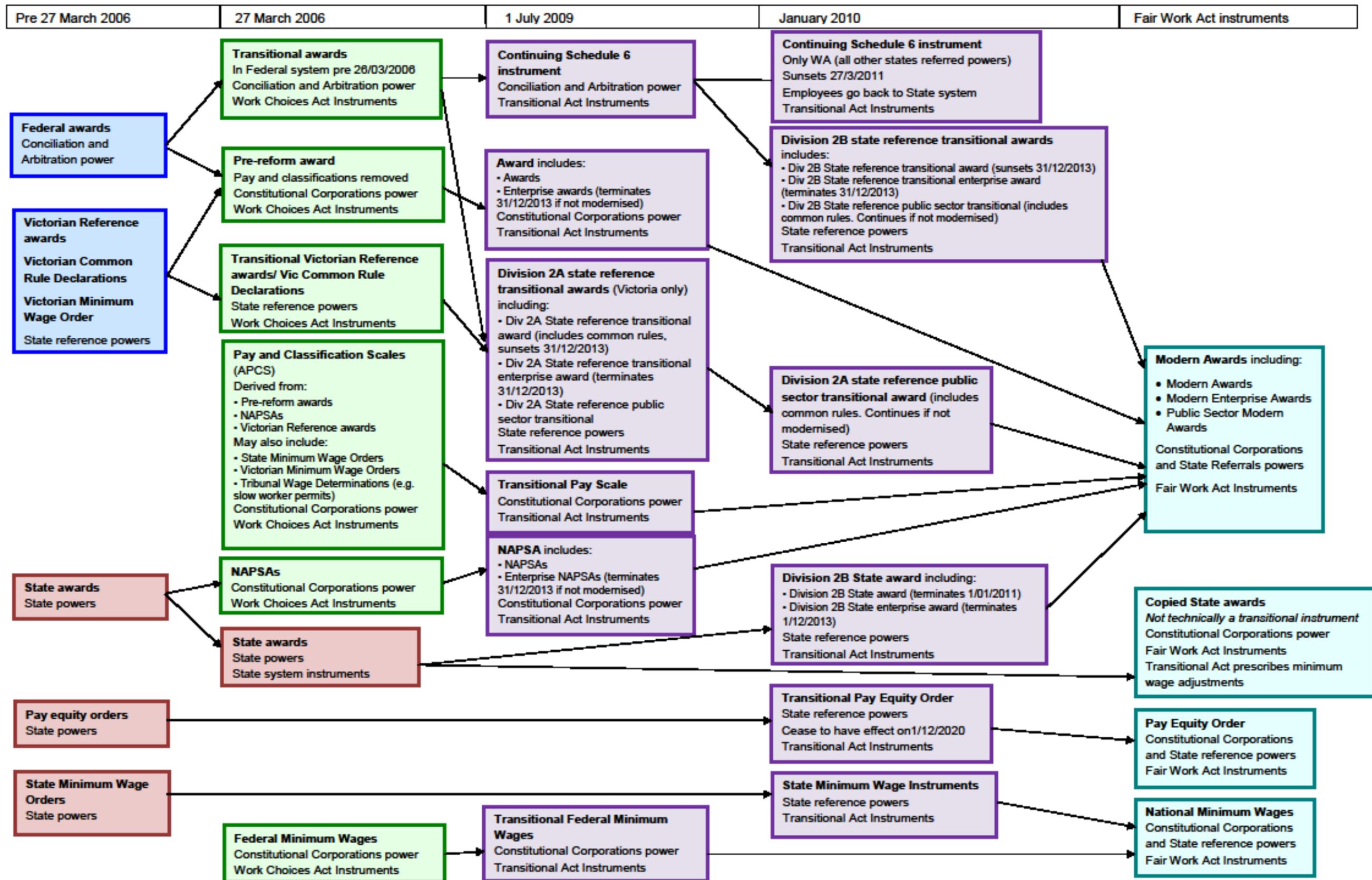
<sup>229</sup> Transitional Act item 43(9), Schedule 3, the modern award has effect so far as it requires an employer to pay a base rate that is equal or higher than the base rate of pay in the transitional pay equity order. Item 45(2) provides for the continued variation of the Transitional Pay Equity Order until the Annual Wage Review 2019–20.

**[93]** The regulations effectively bring the pay rates that apply under TPEO 1 and TPEO 2 into line.<sup>230</sup>

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<sup>230</sup> Explanatory Statement to the Regulation No. 2, p 2.

Attachment D—Transitional Instruments Flow Chart



## Attachment E—Transitional instruments grouped by award-based transitional instrument

<b>Instrument type</b>	<b>Award-based transitional instrument?</b>	<b>Modernisable instrument?</b>
Division 2B State awards	×	×
Division 2B State enterprise awards	×	×
Transitional Australian Pay and Classification Scales	×	✓
State minimum wage instruments	×	×
Awards (pre- <i>Fair Work Act 2009</i> )	✓	✓
Enterprise awards (pre- <i>Fair Work Act 2009</i> )	✓	✓
NASPAs	✓	✓
Enterprise NASPAs	✓	✓
Division 2A state reference transitional awards	✓	✓
Division 2A state reference transitional enterprise awards	✓	✓
Division 2A state reference public sector transitional awards	✓	✓
Division 2B state reference transitional awards	✓	✓
Division 2B state reference transitional enterprise awards	✓	✓
Division 2B state reference public sector transitional awards	✓	✓
Transitional awards	×	×
Common rules	×	×
Transitional Pay Equity Orders	×	×
Copied State awards	×	×

## Attachment F—Transitional rates for Equal Remuneration compared with Model phasing provisions previously in Modern Awards

Equal Remuneration Order <a href="#">PR525485</a>	Model phasing provisions in modern awards <a href="#">[2009] AIRCFB 800</a>										
<p><b>5. Transitional Rates</b></p> <p><b>5.1</b> Clauses 5.2 to 5.7 of this Order apply to an employer which from the first full pay period on or after 1 July 2012:</p> <ul style="list-style-type: none"> <li>(a) was obliged, or</li> <li>(b) but for the operation of an agreement-based transitional instrument or an enterprise agreement would have been obliged, or</li> <li>(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.</li> </ul> <p><b>5.2</b> The payment in clause 5.3 of this Order shall be referred to as the “Transitional Minimum Wage”.</p> <p><b>5.3</b> The employer must pay an employee no less than either:</p> <ul style="list-style-type: none"> <li>(a) the minimum wage for the relevant classification in the Award, or</li> <li>(b) the minimum wage in the relevant transitional minimum wage instrument and/or award-based transitional instrument for the classification concerned whichever is higher.</li> </ul>	<p><b>A.3 Minimum wages – existing minimum wage higher</b></p> <p><b>A.3.1</b> The following transitional arrangements apply to an employer which, immediately prior to 1 January 2010:</p> <ul style="list-style-type: none"> <li>(a) was obliged,</li> <li>(b) but for the operation of an agreement-based transitional instrument would have been obliged, or</li> <li>(c) if it had been an employer in the industry or of the occupations covered by this award would have been obliged</li> </ul> <p>by a transitional minimum wage instrument and/or an award-based transitional instrument to pay a minimum wage higher than that provided in this award for any classification of employee.</p> <p><b>A.3.2</b> In this clause minimum wage includes:</p> <ul style="list-style-type: none"> <li>(a) a minimum wage for a junior employee, an employee to whom training arrangements apply and an employee with a disability;</li> <li>(b) a piecework rate; and</li> <li>(c) any applicable industry allowance.</li> </ul> <p><b>A.3.3</b> Prior to the first full pay period on or after 1 July 2010 the employer must pay no less than the minimum wage in the relevant transitional minimum wage instrument and/or award-based transitional instrument for the classification concerned.</p> <p><b>A.3.4</b> The difference between the minimum wage for the classification in this award and the minimum wage in clause A.3.3 is referred to as the transitional amount.</p> <p><b>A.3.5</b> From the following dates the employer must pay no less than the minimum wage for the classification in this award plus the specified proportion of the transitional amount:</p> <table style="margin-left: 40px;"> <thead> <tr> <th style="text-align: left;">First full pay period on or after</th> <th></th> </tr> </thead> <tbody> <tr> <td>1 July 2010</td> <td style="text-align: right;">80%</td> </tr> <tr> <td>1 July 2011</td> <td style="text-align: right;">60%</td> </tr> <tr> <td>1 July 2012</td> <td style="text-align: right;">40%</td> </tr> <tr> <td>1 July 2013</td> <td style="text-align: right;">20%</td> </tr> </tbody> </table>	First full pay period on or after		1 July 2010	80%	1 July 2011	60%	1 July 2012	40%	1 July 2013	20%
First full pay period on or after											
1 July 2010	80%										
1 July 2011	60%										
1 July 2012	40%										
1 July 2013	20%										

<b>Equal Remuneration Order</b> <u><a href="#">PR525485</a></u>	<b>Model phasing provisions in modern awards</b> <u><a href="#">[2009] AIRCFB 800</a></u>
	<p><b>A.3.6</b> The employer must apply any increase in minimum wages in this award resulting from an annual wage review. If the transitional amount is equal to or less than any increase in minimum wages resulting from the 2010 annual review the transitional amount is to be set off against the increase and the other provisions of this clause will not apply.</p> <p><b>A.3.7</b> These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2014.</p>

## Attachment G—The Legislative Framework

### Termination of modernisable instruments

#### “3 Variation and termination of certain transitional instruments etc. to take account of Part 10A award modernisation process

(1) FWA must, as soon as practicable after a modern award (other than the miscellaneous modern award) made in the Part 10A award modernisation process comes into operation (and subject to subitem (3)):

(a) terminate any of the following (*modernisable instruments*) that FWA considers are completely replaced by the modern award:

- (i) award-based transitional instruments;
- (ii) transitional APCSs; and

(b) if FWA considers that the modern award only partly replaces a modernisable instrument—vary the coverage terms of the modernisable instrument accordingly.

Note 1: The main provisions about transitional instruments are in Schedule 3, and the main provisions about transitional APCSs are in Schedule 9.

Note 2: This item does not limit the effect of any other provision of this Act under which a modernisable instrument ceases to cover a person from a time earlier than when the instrument is terminated or varied under this item.

(2) As soon as practicable after all modern awards made in the Part 10A modernisation process have come into operation, FWA must (subject to subitem (3)) terminate any remaining modernisable instruments.

However, FWA must not, under this item:

(a) terminate a modernisable instrument that is an enterprise instrument or a State reference public sector transitional award, or that covers employees who are also covered by an enterprise instrument or a State reference public sector transitional award; or

(b) vary a modernisable instrument that is an enterprise instrument or a State reference public sector transitional award; or

(c) vary a modernisable instrument so that it ceases to cover employees who are also covered by an enterprise instrument or a State reference public sector transitional award.

Note 1: Item 9 of Schedule 6 deals with termination and variation of modernisable instruments to take account of the enterprise instrument or a State reference public sector transitional award modification process.

Note 2: Item 10 of Schedule 6A deals with termination and variation of State reference public sector transitional awards to take account of the State reference public sector transitional award modernisation process.

- (3) FWA may establish a process for making decisions under this item to terminate or vary one or more modernisable instruments.
- (4) FWA may advise persons or bodies about that process in any way FWA considers appropriate.
- (5) Section 625 of the FW Act (which deals with delegation by the President of functions and powers of FWA) has effect as if subsection (2) of that section included a reference to FWA's powers under subitem (5).<sup>231</sup>

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<sup>231</sup> Transitional Act item 3 of Schedule 5

## Appendix 1—List of remaining transitional instruments

[94] The list below contains those award-based instruments that continue to operate.

[95] This list is indicative only and reflects current Fair Work Commission records as at 15 September 2016.

*Parties are asked to identify any errors or omissions.*

### List of award-based transitional instruments current as at 15 September 2016

Title	Transitional award or NAPSA code	Common rule	State reference transitional award code	Notes (see legend below)
Aboriginal Communities and Organisations (Western Australia) Award 2001	AP814193		AT814193	SACS
Aboriginal Organisations Health and Related Services (Northern Territory) Award 2002	AP818988	CRN		SACS
Actors Etc. (Television) Award 1998	AP765510	CR	AT765510	AE
Aged and Disabled Persons Hostels Award, 1987	AN160007			SACS
Aged Care General Services (State) Award	AN120011			AE
Airline Operations (Domestic Airlines) Award 2000	AP765514		AT765514	AE
Airline Operations (Transport Workers') Long Service Leave Award 1999	AP768518		AT768518	LSL
Asphalt and Bitumen Industry (NSW and ACT) Award 1999	AP766022		AT766022	AE
Attendant Care – Victoria Award 2004	AP832383	CRV	AT832383	SACS
Australian Government Solicitor Award 2001	AP814283			E – EM2013/42
AWU Gold (Mining and Processing) Award 1993	AN160003			AE
Bread Industry (State) Award	AN120080			AE
Breweries (State) Award	AN120085			AE
Breweries, Maintenance Employees (State) Award	AN120086			AE
Broken Hill Commerce and Industry Agreement Consent Award 2001	AN120088			AE
Building and Construction Industry (State) Award	AN120089			AE
Building Construction Industry Award - State 2003	AN140043			AE
Building Employees Mixed Industries (State) Award	AN120091			AE
Building Products, Manufacture and Minor Maintenance Award - State 2003	AN140045			AE
Building Services (Victoria) Award 2003	AP822844	CRV	AT822844	AE

<b>Title</b>	<b>Transitional award or NAPSA code</b>	<b>Common rule</b>	<b>State reference transitional award code</b>	<b>Notes (see legend below)</b>
Building Trades (Construction) Award 1987	AN160034			AE
Building Trades (Government) Award 1968	AN160036			AE
Butter and Cheese Factories Award - Southern Division 2003	AN140050			AE
Butter Factories and Condensories Award 1998	AP769629	CRV	AT769629	AE
Butter, Cheese & Other Dairy Products (State) Award	AN120098			AE
Cafe Restaurant and Catering Award - State (Excluding South-East Queensland) 2003.	AN140052			AE
Canteen Workers (State) Award	AN120672			AE
Caretakers and Cleaners Award	AN150028			AE
Carpenters & Joiners (General) Award 1993	AN150029			AE
Caterers Employees (State) Award	AN120106			AE
Catering - Victoria - Award 1998	AP772681	CRV	AT772681	AE
Catering Employees' (North West Shelf Project) Long Service Leave Conditions Award 1991	AN160049			LSL
Catering Workers' (North Rankin A) Long Service Leave Conditions Award No. A 40 of 1987	AN160050			LSL
Catholic Schools Long Service Leave Portability (State) Award	AN120108			LSL
Cement Mixers and Concrete Workers, Central Batch Plants (State) Consolidated Award	AN120110			AE
Cement Workers' Award, 1975	AN160052			AE
Charitable Institutions Catholic Personal/Carer's Leave (State) Award	AN120674			SACS
Charitable Sector, Aged And Disability Care Services (State) Award 2003	AN120117			SACS
Charitable, Aged and Disability Care Services (State) Award	AN120118			SACS
CHC Helicopters (Aircrew/Rescue Crew) Award 2002	AP815272			E – EM2013/112
Chemical Workers (State) Award	AN120119			AE
Child Care (Subsidised Centres) Award	AN160057			AE
Child Care Industry Award - State 2003	AN140060			AE
Children's Services (Government) Award 1989	AN160059			AE
Civil Construction, Operations and Maintenance General Award - State 2003	AN140061			AE
Clarence City Council Award 2003	AP831207			AS
Cleaning (Building and Property Services) (ACT) Award 1998	AP773639	CRA		AE
Cleaning and Property Services Award	AN170119			AE

<b>Title</b>	<b>Transitional award or NAPSA code</b>	<b>Common rule</b>	<b>State reference transitional award code</b>	<b>Notes (see legend below)</b>
Cleaning Contractors (Hygiene and Pollution Control) Industry (Northern Territory) Award 2003	AP822431	CRN		AE
Clerical and Administrative Employees (State) Award	AN120664			AE
Clerical and Administrative Employees (Victoria) Award 1999	AP773032	CRV		AE
Clerical Employees Award - State 2002	AN140067			AE
Clerical Industry – Shipping Officers – Long Service Leave – Award 2004	AP832433		AT832433	LSL
Clerks (A.C.T.) Award 1998	AP772208	CRA		AE
Clerks (Commercial, Social and Professional Services) Award No. 14 of 1972	AN160066			AE
Clerks' (Control Room Operators) Award 1984	AN160071			AE
Clerks (Long Service Leave – A.C.T.) Award 2000	AP804574	CRA		LSL
Clerks' (Oil Companies) Award 2002	AP820387		AT820387	AE
Clerks (Road Transport Industry) Award 2002	AP818787	CRV	AT818787	AE
Clerks' (South Australia) Award	AN150039			AE
Clothing Trades Award 1999	AP772144	CAV	AT772144	AE
Coal Mining Industry (Mines Rescue Staff) Award, 2005, Queensland, The	AP839582			EM2013/9 (& AE)
Coal Mining Industry (Staff) Award, 2004	AP835164		AT835164	AE
Community and Aged Care Services (ACT) Award 2002	AP817098	CRA		SACS
Community and Public Sector Union Subtitlers Award 1999	AP773267			E – EM2013/71
Community Services (Home Care Service of New South Wales) Care Workers Award 2002	AP815060		AT815060	SACS
Community Services (Home Care) (ACT) Award 2002	AP816351	CRA		SACS
Community Services Award	AN170020			SACS
Concrete Products Factories (A.C.T.) Award 1999	AP772210	CRA		AE
Contract Cleaners' (Ministry of Education) Award, 1990	AN160089			AE
Contract Cleaners Award, 1986	AN160088			AE
Contract Cleaning Industry Award - State 2003	AN140083			AE
Crisis Assistance Supported Housing (Queensland) Award 1999	AP777903		AT777903	SACS
Crisis Assistance, Supported Housing (South Australia) Award 2000	AP772768		AT772768	SACS

<b>Title</b>	<b>Transitional award or NAPSA code</b>	<b>Common rule</b>	<b>State reference transitional award code</b>	<b>Notes (see legend below)</b>
Crisis Assistance, Supported Housing Award 2002	AP813963		AT813963	SACS
Crisis Assistance, Supported Housing Industry – Western Australian Award 2002	AP816708		AT816708	SACS
Cultural Centre Award 1987	AN160093			AE
Delicatessens, Canteens, Unlicensed Cafes and Restaurants Etc. Award	AN150170			AE
Deputies & Shotfirers Long Service Leave Award [1991]	AP778857		AT778857	LSL
Disabilities Services Award	AN150046			SACS
Disability Service Providers Award	AN170026			SACS
Disability Services (Northern Territory) Award 2002	AP818985	CRN		AE & SACS
Disability Services Award (Victoria) 1999	AP778738	CRV	AT778738	SACS
Disability Support Workers Award – State 2003	AN140093			SACS
Drug Factories (State) Award	AN120186			AE
Electrical, Electronic and Communications Contracting Industry (State) Award	AN120191			AE
Electricians &c. (State) Award	AN120192			AE
Engine Drivers and Firemen - General - Award 1998	AP780049	CRV		AE
Engine Drivers and Firemen's (General) (Long Service Leave) Award 1964	AP780052			LSL
Engineering Award - State 2002	AN140107			AE
Enrolled Nurses and Nursing Assistants (Government) Award	AN160122			AE
Enrolled Nurses and Nursing Assistants (Private) Award No. 8 of 1978	AN160123			AE
Entertainment and Broadcasting Industry - Actors - (Theatrical) Award 1998	AP780413	CR	AT780413	AE
Family Day Care Services Award, 1999	AP812580		AT812580	SACS
Family Leave Award 2003	AN140110			AE
Food and Drug Store Employees' Award - Southern Division (Eastern District) 2003	AN140118			AE
Food Preservers (Long Service Leave) Award 2003	AP824372		AT824372	LSL
Food Preservers' Award 2000	AP781106	CRV	AT781106	AE
Food, Beverages and Tobacco Industry - Frozen Goods - Victoria - Award 2000	AP781202	CRV	AT781202	AE
Footwear – Manufacturing and Component Industry (Long Service Leave) Award 1977, The	AP781118		AT781118	LSL

<b>Title</b>	<b>Transitional award or NAPSA code</b>	<b>Common rule</b>	<b>State reference transitional award code</b>	<b>Notes (see legend below)</b>
Furnishing Industry National Award 2003	AP825280	CAV	AT825280	AE
Gas Industry Award - State 2003	AN140130			AE
General Construction and Maintenance, Civil and Mechanical Engineering, &c. (State) Award	AN120228			AE
General Order on Termination, Change and Redundancy (WA)				See Note 1
Glass Industry – Glass Production (Long Service Leave) – Award 1999, The	AP782189		AT782189	LSL
Glass Workers (State) Award	AN120232			AE
Gold Mining Consolidated Award, 1980	AN160141			AE
Government Administration Industry Sector – Minimum Wage Order – Victoria 1998 [Transitional]			AT782915	SR – AM2014/19 – see Note 2
Graphic Arts - General - Award 2000	AP782505	CR	AT782505	AE
Health and Allied Services – Public Sector – Victoria Consolidated Award 1998 [Transitional]			AT783945	SR – AM2013/34 & 43
Health and Community Services Industry Sector – Minimum Wage Order – Victoria 1997	AP784047		AT784047	SACS
Health Professional Services – Public Sector – Victoria Award 2003 [Transitional]			AT827096	SR – AM2013/37 & 43
Health Services Employees Award	AN150064			SACS
Health Workers Community and Child Health Services Award 2000	AP783940		AT783940	SACS
Health, Community Services and Ambulance – Management and Administrative Staff (Public Sector – Victoria) Award 2005	AP843641		AT843641	SACS
Health, Fitness and Indoor Sports Centres (State) Award	AN120240			AE
Higher Education Academic Salaries Award 2002	AP820200		AT820200	AE
Higher Education Contract of Employment Award 1998	AP784204		AT784204	AE
Higher Education General Staff Salaries and Classifications Award 2002	AP815928		AT815928	AE
Home and Community Care Award 2001	AP806214	CRV	AT806214	SACS
Hospital Salaried Officers Award 1968	AN160170			AE
Hospital Specialists and Medical Administrators Award 2002	AP816036	CRV	AT816036	SR - AM2013/36
Hospital Workers (Government) Award No. 21 of 1966	AN160172			AE
Hospital Workers' (N'gala) Award No. 6A of 1958	AN160173			AE

<b>Title</b>	<b>Transitional award or NAPSA code</b>	<b>Common rule</b>	<b>State reference transitional award code</b>	<b>Notes (see legend below)</b>
Hospitality Industry - Accommodation, Hotels, Resorts and Gaming Award 1998, The	AP783479	CRV	AT783479	AE
Hotels, Motels, Wine Saloons, Catering, Accommodation, Clubs and Casino Employees (Northern Territory) Award 2002	AP812953	CRN		AE
Hydrocarbons and Gas (Production and Processing Employees) Award 2002	AP820493	CRV	AT820493	AE
Indigenous Australian Community Housing Award – State 2005	AN140150			SACS
Insurance Industry Award 1998	AP784988	CRV	AT784988	AE
Insurance Industry Superannuation (First) Award 1987	AP785003		AT785003	AE
Joiners (State) Award	AN120280			AE
Liquefied Petroleum Gas Industry Award 1998	AP787043		AT787043	AE
Liquor and Allied Industries Catering, Cafe, Restaurant, Etc. (Australian Capital Territory) Award 1998	AP787016	CRA		AE
Liquor, Hospitality and Miscellaneous Union Supported Employment Services Award 2005	AP841959		AT841959	AE
Local Government Officers (Western Australia) Award, 1999	AP787011		AT787011	AE
Long Service Leave (Oil Drilling Rig Workers and Offshore Catering Workers’) Award, 1999	AP787031		AT787031	LSL
Managers Long Service Leave Award 1991	AP788574		AT788574	LSL
Manufacturing & Wholesale Chemists & Grocers Award	AN150076			AE
Marine Engineers (Seagoing and Offshore Industries) Long Service Leave Award 1993	AP788173		AT788173	LSL
Maritime Industry (Seamen, Cooks and Stewards) Long Service Leave Award 1995	AP788677		AT788677	LSL
Maritime Industry Offshore Oil and Gas Operations Award 2003	AP826061		AT826061	AE
Maritime Industry Seagoing Award 1999	AP788080		AT788080	AE
Maritime Officers (Seagoing and Offshore Industries) Long Service Leave Award 1993	AP788130		AT788130	LSL
Medical Scientists (South Australian Public Sector) Award	AN150080			AE
Medical Scientists, Pharmacists and Psychologists (Public Sector – Victoria) Award 2003 [Transitional]			AT830467	SR – AM2013/33 & 43
Metal Trades (General) Award 1966	AN160206			AE
Metal, Engineering and Associated Industries (Accident Pay, Victoria) Award 1998, The	AP789881	CRV	AT789881	AE
Metal, Engineering and Associated Industries (State) Award	AN120334			AE

<b>Title</b>	<b>Transitional award or NAPSA code</b>	<b>Common rule</b>	<b>State reference transitional award code</b>	<b>Notes (see legend below)</b>
Metal, Engineering and Associated Industries Award 1998	AP789529	CRV	AT789529	AE
Metalliferous Mining Industry (State) Award 1995	AN120681			AE
Milk Processing and Cheese etc., Manufacturing Award	AN150083			AE
Milk Treatment &c., and Distribution (State) Award	AN120337			AE
Minimum Conditions of Employment Act 1993 (WA)				See Note 1
Miscellaneous Workers' - Kindergartens and Child Care Centres, &c. (State) Award	AN120347			AE
Miscellaneous Workers (Catholic Personal/Carer's Leave) (State) Award	AN120682			SACS
Miscellaneous Workers' General Services (State) Award	AN120344			AE
Miscellaneous Workers Home Care Industry (State) Award	AN120341			SACS
Miscellaneous Workers' Kindergartens and Child Care Centres (State) Training Wage Award	AN120346			AE
Miscellaneous Workers' Security Industry (State) Superannuation Award	AN120715			AE
Mobile Crane Hiring Award 2002	AP816842	CRV	AT816842	AE
Montessori Schools and/or Pre-Schools Portability of Long Service Leave Award	AN120727			LSL
Motels, Accommodation and Resorts Award 1998	AP787952	CRV	AT787952	AE
Municipal Officers (N.T.) Award 2002	AP819861			AE & AS
Musicians' (Casual Employment in Records for Sale to the Public) Award 2000	AP807534		AT807534	AS
Musicians' (Casual Employment in Television) Award 2000	AP787971		AT787971	AS
Musicians' Feature Film, Documentary, Telemovies and Television Mini – Series Award 2000	AP788046		AT788046	AS
National Building and Construction Industry Award 2000	AP790741	CRV	AT790741	AE
National Joinery and Building Trades Products Award 2002	AP817265	CRV	AT817265	AE
National Metal and Engineering On-site Construction Industry Award 2002	AP816828	CRV	AT816828	AE
National Training Wage Award 2000	AP790899	CAN	AT790899	AE
Note Printing Australia Award 2000, The	AP790759			E – EM2013/115 – See Note 3

<b>Title</b>	<b>Transitional award or NAPSA code</b>	<b>Common rule</b>	<b>State reference transitional award code</b>	<b>Notes (see legend below)</b>
Nurses' (Private Hospitals) Award	AN160236			AE
Nurses (South Australian Public Sector) Award 2002	AP817220		AT817220	AE
Nurses' Aged Care Award - State 2005	AN140193			AE
Nurses, Other Than in Hospitals, &c., (State) Award	AN120385			AE
Nursing Homes, &c., Nurses' (State) Award	AN120387			AE
Occupational Health Nurses (State) Award	AN120389			AE
Oil Drilling Rig Workers (Offshore Mobile Drilling Rigs) Award 2001	AP812663			AE
Oil Industry (Long Service Leave) Award 2000	AP792264		AT792264	LSL
Order – Apprentices' and Trainees' Wages and Conditions (Excluding Certain Queensland Government Entities) 2003	AN140326			See Note 4
Order – Apprentices' and Trainees' Wages and Conditions (Queensland Government Departments and Certain Government Entities)	AN140327			See Note 4
Order – Supply of Tools to Apprentices (Qld)				See Note 4
Parking Attendants, &c. (State) Consolidated Award	AN120406			AE
Pastoral Employees (State) Award	AN120408			AE
Pastrycooks (Victoria) Award 1999	AP792620	CRV	AT792620	AE
Photographic Industry - General - Award 2002	AP815942	CRV	AT815942	AE
Pitjantjatjara Council Inc. and Associated Organisations Award 2000	AP807173		AT807173	SACS
Plant, &c., Operators on Construction (State) Award	AN120419			AE
Plastic Moulding, &c. (State) Award	AN120421			AE
Plumbers and Gasfitters (State) Consolidated Award	AN120684			AE
Plumbing Industry (New South Wales) Award 1999	AP792368		AT792368	AE
Plumbing Trades (Southern States) Construction Award, 1999	AP792355	CRV	AT792355	AE
Poultry Industry Preparation (State) Award	AN120428			AE
Poultry Processing Award - State 2003	AN140217			AE
Private Hospital Employees' Award, 1972	AN160263			AE
Private Hospitals, Aged Care and Disability Services Industry (Training) (State) Award	AN120437			AE & SACS
Private Hospitals, Convalescent and Benevolent Homes (Northern Territory) Award 2003	AP826427	CRN		SACS
Private Pathology Laboratories (State) Award	AN120439			AE
Quarries, &c (State) Award	AN120447			AE

<b>Title</b>	<b>Transitional award or NAPSA code</b>	<b>Common rule</b>	<b>State reference transitional award code</b>	<b>Notes (see legend below)</b>
Race Clubs Employees (State) Award	AN120450			AE
Racing Industry Employees' Occupational Superannuation Award - State 2003	AN140254			AE
Railways Metal Trades Grades Award 2002	AP817167		AT817167	AE
Railways Salaried Employees Award 2003	AP830364		AT830364	AE
Railways Traffic, Permanent Way and Signalling Wages Staff Award 2002	AP817741		AT817741	AE
Residential and Support Services (Victoria) Award 1999 [Transitional]		CRV	AT795711	SR – AM2014/30 – See Note 5
Restaurant Keepers Award	AN170086			AE
Restaurant, Tearoom and Catering Workers' Award, 1979	AN160276			AE
Retail and Wholesale Industry - Shop Employees - Australian Capital Territory - Award 2000	AP794740	CRA		AE
Retail, Wholesale and Distributive Employees (NT) Award 2000	AP794741	CRN		AE
Rubber, Plastic and Cable Making Industry - General - Award 1998	AP794720	CRV	AT794720	AE
Security Employees (A.C.T.) Award, 1998	AP796056	CRA		AE
Security Employees (Victoria) Award 1998	AP796143	CRV	AT796143	AE
Security Industry (Contractors) Award - State 2004	AN140269			AE
Security Industry (Northern Territory) Award 2002	AP819072	CRN		AE
Security Industry (State) Award	AN120497			AE
Security Industry Award	AN170092			AE
Security Officers (Western Australia) Award 2002	AP814209		AT814209	AE
Security Officers' Award	AN150139			AE
Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977, The	AN160292			AE
Shop Employees (State) Award	AN120499			AE
Shop, Distributive and Allied Employees Association - Victorian Shops Interim Award 2000	AP796250	CRV	AT796250	AE
Social and Community Services – Victoria – Award 2000	AP796561	CRV	AT796561	SACS
Social and Community Services – Western Australia Award 2002	AP815319		AT815319	SACS
Social and Community Services (ACT) Award 2001	AP808334	CRA		SACS
Social and Community Services (Queensland) Award 2001	AP808848		AT808848	SACS

<b>Title</b>	<b>Transitional award or NAPSA code</b>	<b>Common rule</b>	<b>State reference transitional award code</b>	<b>Notes (see legend below)</b>
Social and Community Services Award	AN150140			SACS
Social And Community Services Catholic Personal/Carer's Leave (State) Award	AN120687			SACS
Social and Community Services Employees (State) Award	AN120505			AE & SACS
Social and Community Services Industry - Community Services Workers - Northern Territory Award 2002	AP817216	CRN	AT817216	AE & SACS
Staff Long Service Leave Award 1991	AP796492		AT796492	LSL
Standard Hours (Oil Companies) Award 2003	AP825355		AT825355	AE
Starch Manufacturers, &c. (State) Award	AN120509			AE
Stevedoring Industry (Long Service Leave) Award 1992	AP796037		AT796037	LSL
Storemen and Packers, General (State) Award	AN120513			AE
Supported Wage Award - State 2002	AN140285			AE
Teachers (Catholic Independent Schools) (State) Award 2006	AN120539			AE
Teachers (Non-Government Pre-Schools) (State) Award 2006	AN120546			AE
Technical Services Professional Engineers (General Industries) Award 1998	AP800659	CR	AT800659	AE
Tertiary Education Superannuation Scheme - Superannuation Award 1988	AP799601		AT799601	AE
Textile Industry (State) Award	AN120549			AE
Textile Industry Award 2000	AP799036	CRV	AT799036	AE
Theatrical Employees (Training Wage) (State) Award	AN120572			AE
Theatrical Employees' Redundancy (State) Award	AN120574			AE
Timber and Allied Industries (Long Service Leave) Award 1999	AP799122		AT799122	LSL
Training Wage Award - State 2003	AN140303			AE
Tramway and Omnibus Public Transport (Victoria) Award 1992	AP799646		AT799646	AE
Transport Industry - Mixed Enterprises Interim (State) Award	AN120606			AE
Transport Industry - Quarried Materials (State) Award	AN120609			AE
Transport Industry (State) Award	AN120594			AE
Transport Industry (State) Superannuation (No. 2) Award	AN120595			AE
Transport Workers (Ancillary Vehicles) Award 2002	AP815801		AT815801	AE

<b>Title</b>	<b>Transitional award or NAPSA code</b>	<b>Common rule</b>	<b>State reference transitional award code</b>	<b>Notes (see legend below)</b>
Transport Workers (Distribution Facilities) Award 2004	AP832166		AT832166	AE
Transport Workers (Mixed Industries) Award 2002	AP813166		AT813166	AE
Transport Workers (Oil Distribution) Award 2001	AP813252	CAV	AT813252	AE
Transport Workers' (Refuse, Recycling and Waste Management) Award 2001	AP812785	CNV	AT812785	AE
Transport Workers' (Superannuation) Consolidated Award 2004	AP834577	CAN	AT834577	AE
Transport Workers Award 1998	AP799474	CNV	AT799474	AE
Tugboat Industry Award 1999	AP799111		AT799111	AE
Universities and Affiliated Institutions Academic Research Salaries (Victoria and Western Australia) Award 1989	AP801440		AT801440	AE
Universities and Post Compulsory Academic Conditions Award 1999	AP801516		AT801516	AE
Vehicle Industry – Repair, Services and Retail – (Long Service Leave) Award 1977	AP801832		AT801832	LSL
Vehicle Industry (Long Service Leave) Award 1977	AP801831		AT801831	LSL
Vehicle Industry Award 2000	AP801818	CRV	AT801818	AE
Victorian Public Service Award 2005	AP841792		AT841792	SR – AM2013/32 and others – see Note 6
Warehouse Employees - Drug (State) Award	AN120632			AE

**Legend:**

AE	<a href="#">Instruments that cover employees also covered by an enterprise instrument</a>
AS	<a href="#">Instruments that cover employees also covered by a State reference public sector transitional award</a>
E	Enterprise instrument yet to be terminated
LSL	Instrument containing long service leave provisions; these instruments were not considered during the Part 10A award modernisation process as per paragraph 34 of the <a href="#">Minister's request</a>
SACS	Instrument replaced by <i>Social, Community, Home Care and Disability Services Industry Award 2010</i> (see <a href="#">[2010] FWCFB 9916</a> at [44])
SR	<a href="#">State reference public sector transitional awards</a>

	<b>Common Rule in:</b>
CAN	ACT and NT
CAV	ACT and Victoria

CR	ACT, NT and Victoria
CRA	ACT only
CRN	NT only
CRV	Victoria only

Note 1: During the 2011 Termination of instruments proceedings the Chamber of Commerce and Industry Western Australia submitted that a NAPSA was derived from this instrument - [See submission by CCIWA](#)

Note 2: During proceedings in AM2014/19, the CPSU, the Community and Public Sector Union submitted that this instrument was effectively superseded by AT841792 and AT825011 – See [submission by CPSU](#)

Note 3: This application was granted in [\[2014\] FWCFB 5733](#); modern enterprise award not yet made

Note 4: Transitional instruments have been derived from these instruments under the Transitional Regulations and may still operate

Note 5: During proceedings in AM2014/30, the Health Services Union of Australia submitted that there are no State reference public sector employees under this instrument – see [submission by HSU](#)

Note 6: The *Victorian Public Service Award 2016* replaces this award and is to commence on 3 October 2016