



## **IMPORTANT EMPLOYMENT INFORMATION FOR UNITING CHURCH EMPLOYERS BASED IN NSW**

### **Modern Award transitional arrangements for Division 2B Employers<sup>1</sup>**

#### **BACKGROUND**

As the majority of employers within the Uniting Church in Australia Synod of NSW and the ACT that are based within NSW are not constitutional corporations, and were not respondent to a federal award, they are not currently covered by modern awards.

These employers had the terms and conditions of their old state awards known as Division 2B industrial Instruments preserved for this year, and will start to be covered by modern awards next year.

Fair Work Australia ("FWA") has now determined how these employers will transition into the relevant modern award.

#### **1. KEY CHANGES**

- All Uniting Church employers currently covered by a Division 2B state award will continue to be covered by all the terms and conditions of that award up until the end of January 2011.
- From the first full pay period to commence on or after 1 February 2011 the relevant modern award will replace the current Division 2B state award and the model transitional schedule found in most modern awards will start to apply to Division 2B employers
- Minimum wages, penalties and loadings in a modern award will be phased in over a few years. The first phase-in date will be the first full pay period to commence on or after 1 February 2011.

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<sup>1</sup> Source Information contained in this paper has been provided by AFEI

## 2 WHAT HAPPENS ON 1 FEBRUARY 2011?

### ***Wages and Penalties***

- Transitional arrangements only apply to wages, penalties and loadings for example shift work.
- Wages and penalties will start to transition from 1 February 2011.
- This '*transition*' will be based on the difference between the modern award rate and the relevant NAPSA pay scale rate, not the rate in the Division 2B state award. This rate is known as the transitional rate.
- Overtime is not phased in.
- On the first full pay period to commence on or after 1 February 2011, employers currently covered by Division 2B state awards, will need to '*transition*' minimum wage rates and penalties to the modern award.
- Subject to some minor exceptions, employers will NOW need to pay at least the modern award rate, plus or minus 80% of the difference between the modern award and the old NAPSA rate.
- Where current rates of pay are less than both the modern award rate and the transitional rate, employers must, as an absolute minimum, pay at least the transitional rate even if the transitional rate is more than the modern award rate.
- Employees suffering a reduction in take home pay will be able to make application to FWA for a special order to remedy that situation. Consequently where current rates of pay are in excess of both the modern award rate and the transitional rate, it is recommended that employers continue to pay the higher rate as an over award payment until such time as the modern award rate catches up. This can be achieved by absorbing future FWA Annual Rate Review increases into the over award component of the pay. That will require the insertion of an absorption clause into each affected employee's employment contract.

#### **Example**

All employers regardless of their constitutional corporation status or not are to be treated in exactly the same manner, it is therefore necessary to calculate the transitional wage rate to be paid, as an absolute minimum, by taking the difference between the modern award rate and the NAPSA (or pay scale) rate that applied to constitutional corporations immediately before the modern award applied to them on 1 January 2010.

Employers employing persons covered by the Division 2B state award based on the Clerical and Administrative Employees (State) Award will need to transition those employees' rates from the pay scale related to the Clerical and Administrative Employees NSW NAPSA that had application on 31 December 2009 and not the rate in the Division 2B state award.

### ***Redundancy and accident pay***

- FWA will also amend the special transitional provisions relating to redundancy and accident pay found in most modern awards.
- Where a Division 2B state award entitled an employee to more beneficial redundancy pay or accident pay, that entitlement continues to apply until 31 December 2014.

### ***Other award terms and conditions***

- All other terms and conditions of the modern award will start to apply to employers currently covered by Division 2B state awards from the first full pay period to commence on or after 1 February 2011.
- If a term of a modern award does not relate to wages, penalties and loadings, redundancy or accident pay for example ordinary hours of work, allowances, national employment standards, that modern award term will start in full from the first full pay period to commence on or after 1 February 2011.

## **3 WHAT HAPPENS TO SOCIAL AND COMMUNITY SERVICES AND CHILDCARE ORGANISATIONS?**

Special transitional arrangements are set out in the modern awards that cover these industries.

### **WHAT SHOULD UNITING CHURCH EMPLOYERS DO NEXT?**

All Uniting Church employers should start to prepare for the changes that will take effect from **1 February 2011**, and should contact HR Services to discuss which modern awards will cover your employees and the likely adjustments you will need to make.

### **FOR FURTHER INFORMATION**

If Uniting Church employers have any questions please contact HR Services by telephone on (02) 8267 4365 or (02) 8267 4369 or e-mail [vickir@nsw.uca.org.au](mailto:vickir@nsw.uca.org.au) or [alit@nsw.uca.org.au](mailto:alit@nsw.uca.org.au).