

AWARD MODERNISATION – WHAT IS MEANS FOR ASU MEMBERS

Modern industry and occupational awards

Background

During 2008 and 2009, the Australian Industrial Relations Commission (AIRC) undertook a process of reviewing and updating awards to make ‘modern awards’. This work by the AIRC was carried out in accordance with a request made by the Federal Government. Through the award modernisation process, the AIRC reduced the number of industry and occupation awards from approximately 1500 to 122. These 122 modern awards apply on a national basis.

The ASU has prepared this guide for members so that you know what award modernisation is and what effect it may have on your working terms and conditions. Please refer to the glossary on the last page if you come across a term in this guide that you are unfamiliar with.

Aims of award modernisation

Award modernisation was intended to create awards that:

- Are simple to understand;
- Easy to apply;
- Provide a fair minimum safety net of enforceable terms and conditions of employment for employees;
- Set the safety net for collective bargaining.

The award modernisation process was not intended to disadvantage employees or increase costs for employers.

Bargaining's the key

Modern awards are designed to provide only a safety net for employees. It is through enterprise bargaining that ASU members can really influence and improve their terms and conditions of

employment. The ASU will work with members affected by award modernisation to improve their working lives by securing better terms and conditions through collective bargaining.

Start date of modern awards

The modern awards commenced operation on 1 January 2010. On that same date, pre-modern industry and occupational awards ceased to operate. So you may have already become covered by a modern award.

There are exceptions to the 1 January 2010 start date. Certain modern award terms do not start to take effect until 1 July 2010¹, and they will be phased in over five years. These are:

- Minimum wage rates;
- Casual and part-time loadings;
- Weekend and public holiday penalty rates;
- Evening and other penalty rates;
- Shift allowances.

Another exception is that the wage rates and classification structure in the modern award for the social and community sector, which is the Social, Community, Home Care and Disability Services Industry Award 2010). These rates and classifications do not take effect until 1 July 2011.

Modern award coverage

Modern awards cover employees in respect to the industry they work in or in respect to the employee's occupation. Each modern award has a coverage clause which defines the types of employees who are covered by each modern award.

The ASU's involvement in the award modernisation process

Unions, employers and other interest groups put arguments (written and verbal submissions) to the AIRC during the award modernisation process. The ASU was heavily involved in the process

because our union covers members in numerous industries and occupations and we wanted to do our best to maintain the award entitlements that our members had prior to award modernisation.

The ASU fought hard and succeeded in maintaining an occupational award for clerical and administrative employees. This modern award is the Clerks – Private Sector Award 2010 and it replaces the Clerical and Administrative Employees (Victoria) Award 1999. It means that clerical and administrative work has not been subsumed into industry specific awards. We also succeeded in getting the AIRC to remove a clause from the Clerks – Private Sector Award 2010 which excluded employees earning more than \$45,000 from being entitled to many award conditions.

The award modernisation process continues with enterprise awards

Now that the modernisation of occupational and industry awards has been completed, Fair Work Australia (FWA) will start to modernise enterprise awards. Enterprise awards set out the minimum conditions for a specific enterprise or employer. Unlike an occupational or industry award, enterprise awards name the employer and employees who are covered by it. For example, if you work at Qantas, you are covered by an enterprise award – the Airline Officers (Qantas Airways Limited) Award 2000.

The process for modernising and terminating enterprise awards

The process for modernising enterprise awards is as follows:

Employees, employers and unions who are covered by an enterprise award can make an application to FWA to modernise that enterprise award.

Employees, employers and unions can also make applications to FWA to terminate enterprise awards.

FWA will take into account several factors in dealing with applications to modernise an enterprise award or terminate an enterprise award. These factors are:

- Whether there is a modern award that can cover the employees;
- The terms and conditions of employment in the industry and whether the enterprise award reflects those terms and conditions;
- Whether the enterprise award contains conditions specific to that enterprise;
- The impact of modernising an enterprise award on the enterprise;
- The views of the employees, the employer and the union who are covered by the enterprise award.

Timeframe

Enterprise awards will be modernised until 31 December 2013. Enterprise awards that have not been modernised will cease to exist on 31 December 2013.

The ASU's strategy is to get the best outcome for ASU members through the enterprise award modernisation process

Some ASU members will be covered by enterprise awards that are superior to the relevant modern award, and some members may be covered by enterprise awards that are inferior to the relevant modern award. The ASU will work with members to achieve the best possible outcome between now and 2013.

Modern awards - frequently asked questions

1. Q: What is an award?

1. A: Awards are legally-enforceable documents that set out minimum employment conditions for different jobs. Awards can be specific to occupations, industries or to enterprises. Many ASU members are employed under award conditions.

Awards are also relevant to the employment conditions of ASU members who work under an enterprise agreement (EBA). This is because an EBA can only come into operation if employees are better off overall on the EBA than the applicable award.

2. Q: What is included in modern awards?

2. A: Modern awards include terms relating to the following matters:

- Minimum wages
- Classification structures
- Types of employment
- Arrangements for when work is performed
- Overtime rates
- Penalty rates (special rates for working outside of normal working hours such as weekends and public holidays).
- Breaks
- Allowances
- Leave
- Superannuation
- Consultation with employees about changes
- Dispute resolution processes

3. Q: What does award modernisation mean for me if I work under an EBA at the moment?

3. A: You will continue to be covered by your EBA. A modern award will not apply to you and there will be no change to the terms and conditions in your EBA. However, when your EBA is renegotiated, it may be compared to the modern award that applies to your industry or occupation. For an EBA to come into operation, you must be better off overall, on the EBA as compared to applicable modern award.

4. Q: What does award modernisation mean for me if I work under an enterprise award?

4. Q: You will continue to be covered by your enterprise award. A modern award will not apply to you and there will be no change to the terms and conditions in your enterprise award.

Any enterprise awards that have not been modernised will be terminated on 31 December 2013. So if you are covered by an enterprise award and no application is made to modernise or terminate it, there will be no change to the contents of the enterprise award until 2013.

As stated above, the ASU wants to get the best outcome for members who are covered by enterprise awards. If you are covered by an enterprise award that contains conditions that are superior to those in a modern award that could cover you, we will look to modernise your enterprise award so that your conditions are secured past 2013. On the other hand, if you are covered by an enterprise award that contains conditions that are worse than what is contained in the applicable modern award for your type of work, we will consider terminating your enterprise award so that you become covered by a modern award instead.

5. Q: What does award modernisation mean for me if I work under an AWA or an ITEA?

5. A: You will continue to be covered by your AWA or ITEA. A modern award will not apply to you.

For members on AWAs - award modernisation will not cause any change to the terms and conditions set out in your AWA.

It is, however, possible to terminate an AWA either before or after its expiry date. Depending on the industrial arrangements in your workplace, an EBA, an enterprise award or a modern award may then set out your employment conditions. For members on ITEAs – all ITEAs expired on 31 December 2009. However, your ITEA will continue to govern your terms and conditions until it is terminated. Depending on the industrial arrangements in your workplace, an enterprise agreement, an enterprise award or a modern award may then govern your employment conditions.

For more advice about AWAs or ITEAs, contact the ASU.

6. Q: What does award modernisation mean for me if I work under an occupation or industry award?

6. A: A modern award now sets out your terms and conditions. The following table sets out the modern award that will apply to you, according to your industry and according to the award that used to apply to you.

Industry	Pre-modern award	Corresponding modern award
General	Clerical and Administrative Employees (Victoria) Award 1999	Clerks—Private Sector Award 2010
	Business Equipment Industry - Clerical Officers Award 2000	Business Equipment Award 2010
Community and Not-For-Profit (SACS)	Social and Community Services - Victoria - Award 2000	Social, Community, Home Care and Disability Services Industry Award 2010
Freight and Logistics	Clerks (Road Transport Industry) Award 2002	Clerks—Private Sector Award 2010
Legal	Victorian Legal Professional, Clerical and Administrative Employees Award 2004	Legal Services Award 2010
Customer Service Centres	Contract Call Centre Industry Award 2003	Contract Call Centres Award 2010
Manufacturing	Clerical and Administrative Employees - Breweries - Award 1999	Clerks—Private Sector Award 2010

Airlines and related	Airline Operations – Clerical and Administrative Award 1999	Airline Operations—Ground Staff Award 2010
	Overseas Airlines Award 1999	Airline Operations—Ground Staff Award 2010
Retail	Clerical and Administrative Employees (Victoria) Award 1999	Clerks—Private Sector Award 2010
Insurance	Clerical and Administrative Employees (Health Insurance Industry) Award 2001	Banking, Finance and Insurance Award 2010

7. Q: Will I be worse off under a modern award?

7. A: Some provisions in modern awards are worse than the entitlements ASU members received in their pre-modern award.

Our biggest concerns with the modern awards are the following reduced entitlements:

1. Casual loading in the Clerks – Private Sector Award 2010

The casual loading in this modern award is 25%. In the corresponding pre-modern award - the Clerical and Administrative Employees (Victoria) Award 1999, casuals received a loading of up to 33.3%. The difference in the casual loading (8.3%) will be phased in over five years.

2. The weekly pay rates in the Airline Operations—Ground Staff Award 2010

The modern award reduced rates of pay in the following ways:

- For employees who were covered by the Overseas Airlines Award 1999 - pay rates were reduced between \$76.23 and \$301.56 per week in this modern award.

- For employees who were covered by the Airline Operations – Clerical and Administrative Award 1999 – the change in pay rates ranged from a \$41.71 reduction to a \$31.40 increase in this modern award.
3. Several allowances have been lost through the making of the Airline Operations—Ground Staff Award 2010. These are:
- The Tropical Zone Allowance, contained in the Airline Operations – Clerical and Administrative Award 1999. This allowance ranged between \$3,890 and \$7,750 per annum for employees working above the Tropic of Capricorn.
 - The Transport Allowance Airline Operations – Clerical and Administrative Award 1999 - \$8.07 per shift or overtime period which starts before 7am or finishes after 7am.
4. Personal leave has been cut through the making of the Airline Operations—Ground Staff Award 2010.
- The Airline Operations Airline Operations—Ground Staff Award 2010 provides for 10 days’ personal leave a year.
 - For employees who were covered by the Airline Operations - Clerical and Administrative Award, this represents 4 less personal leave days for employees in their first year of service and nearly 9 less days for each subsequent year of service.
 - For employees who were covered by the Overseas Airlines Award 1999 the modern award entitlement is a reduction in 5 personal leave days per year.

8. Q: When do altered employment conditions start?

8. A: Some employment conditions that deal with pay (monetary entitlements) in modern awards represent an increase or decrease in what your employer has been paying you under a pre-modern award. Monetary entitlements are minimum wages, penalties and allowances. The differences in

monetary entitlements, between pre-modern and modern awards, will be introduced gradually over the next five years; starting from 1 July 2010

9. Q: What can I do if my pay has been cut as a result of a modern award?

9. A: If you believe you have suffered a reduction in your take-home pay, an application for a take-home pay order can be made to FWA. If a take-home pay order is made by FWA it means that your employer will be required to rectify the reduction in take-home pay. The ASU will make this application on your behalf if you are an ASU member. At present, the ASU is assessing which workplaces may be susceptible to a reduction in take-home pay and will take steps to protect members so that a reduction in take-home pay is avoided.

Take-home pay is the pay an employee receives after tax and after any salary deduction arrangements. It includes:

- Wages
- Allowances
- Overtime payments
- Incentive payments

Of course, a take-home pay order is only necessary if your employer seeks to reduce your pay. Any ASU member facing a cut to pay or conditions should contact the ASU immediately.

10. Q: Is my take-home pay guaranteed to increase if I am covered by a modern award?

10. A: No. Whilst take-home pay orders can prevent employees from suffering a reduction in take-home pay, increases are not guaranteed. Each year the minimum wage rates will be reviewed by Fair Work Australia. If you are being paid above the minimum wage rate set out in a modern award, as adjusted annually, your employer does not have to pass on this increase to you.

The best way to achieve regular pay increases is through collective bargaining.

11. Q: I am a high income earner. Does a modern award cover me?

11. A: A modern award will only cease to cover you if the following conditions are met:

- Your annual earnings exceed \$113,800*, or would exceed that amount if you worked full-time;
- Your employer has given you a written undertaking, that – for at least 12 months - your annual earnings will exceed \$113,800 (this is called a ‘guarantee of annual earnings’);
- The employer has notified you in writing that a modern award will not apply to you while the guarantee of annual earnings is in place;
- An EBA does not apply to you.

A guarantee of annual earnings can be revoked by agreement between you and your employer. If the guarantee is revoked, you will be covered by a modern award regardless of your income.

*Figure of \$113,800 is the high income threshold for the 2010/2011 financial year. This figure is indexed annually.

12. Q: Where can I find the modern awards?

All modern awards can be found at <http://www.airc.gov.au/awardmod/fullbench/awards.htm>

There is a link to the modern awards from the ASU’s homepage www.asuvic.org

Glossary

Australian Industrial Relations Commission (AIRC) – The tribunal that used to deal with workplace matters. This tribunal is now known as ‘Fair Work Australia’.

AWA – Is short for Australian Workplace Agreement. These are individual agreements between employees and employers that were allowed during the era of the Howard Government. AWAs can no longer be made.

EBA - Is short for Enterprise Agreement. Enterprise Agreements are negotiated between employers, employees and often unions and set out terms and conditions of employment that are better than those in an award.

Enterprise award – Is a legally enforceable document that sets out the minimum conditions for a specific enterprise or employer. Enterprise awards name the employer and employees who are covered by the instrument.

ITEA – Is short for Individual Transitional Employment Agreement. Like AWAs, ITEAs are individual agreements between employees and employers. ITEAs can no longer be made.

Modern award – Is a legally-enforceable document that sets out minimum employment conditions for different occupations and industries. These awards commenced operation on 1 January 2010.