What will be the impact of the pay equity case on the transition to the modern Social, Community, and Home Care & Disability Services Award (SCHADS Award)?

The pay equity case has affected the transition to the modern award in two ways. It has delayed the transition to the modern award rates of pay, classifications and loadings and it will lead to an increase in pay rates in the SCHADS award in line with the decision (the union has claimed for the first instalment to be from 1/12/2012, but this will be subject to the final decision). This might not necessarily mean an immediate increase in the pre reform award pay rates which currently apply to employees as the SCHADS award pay rate may be lower than the pre reform pay rates.

All other awards commenced the transition to the modern award pay rates, classification and loadings on 1/7/2010. The transition will be complete for all awards, including the modern SCHADS Award 2010 on 1/7/2014. However the transitional pay rates in the SCHADS award are likely to be overridden by the pay equity case pay rates for SACS classifications and crisis accommodation classifications.

Transitional classifications and loadings will apply to employees on the SACS classifications and crisis accommodation classifications in SCHADS, from the first full pay period on or after 1/7/2012. The Homecare and Family Day care classifications, transitional pay rates and transitional loadings in the SCHADS award will apply from the first full pay period on or after 1/2/2012. The tables below illustrates the movement in wages, penalties and loadings for employees on the various SCHADS Classifications.

**SACS and Crisis Accommodation - Wages**

<table>
<thead>
<tr>
<th>Existing wage rate</th>
<th>Prior to July 2012</th>
<th>From July 2012</th>
<th>Between 2012-2014</th>
<th>From July 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Lower</strong> than modern award</td>
<td>Existing wage rate</td>
<td>Modern award rate plus national wage increase</td>
<td>ERO – to be determined</td>
<td>Modern award rate plus national wage &amp; ERO increases</td>
</tr>
<tr>
<td><strong>Higher</strong> than modern award</td>
<td>Existing wage rate</td>
<td>Existing wage rate plus national wage increase</td>
<td>ERO – to be determined</td>
<td>Modern award rate plus national wage &amp; ERO increases</td>
</tr>
</tbody>
</table>
**SACS and Crisis Accommodation - Penalties and Loadings**

<table>
<thead>
<tr>
<th>Existing loading/penalty</th>
<th>Prior to July 2012</th>
<th>From July 2012</th>
<th>From July 2013</th>
<th>From July 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Lower</strong> than modern award</td>
<td>Existing loading/penalty</td>
<td>Modern award rate minus 40%</td>
<td>Modern award rate minus 20%</td>
<td>Modern award rate</td>
</tr>
<tr>
<td><strong>Higher</strong> than modern award</td>
<td>Existing loading/penalty</td>
<td>Modern award rate plus 40%</td>
<td>Modern award rate plus 20%</td>
<td>Modern award rate</td>
</tr>
</tbody>
</table>

**Home Care & Family Day Care – Wages, and Penalties & Loadings**

<table>
<thead>
<tr>
<th>Existing wage rate or loading/penalty</th>
<th>Prior to February 2012</th>
<th>From February 2012</th>
<th>From July 2012</th>
<th>From July 2013</th>
<th>From July 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Lower</strong> than modern award</td>
<td>Existing rate</td>
<td>Modern award rate minus 60%</td>
<td>Modern award rate minus 40%</td>
<td>Modern award rate minus 20%</td>
<td>Modern award rate</td>
</tr>
<tr>
<td><strong>Higher</strong> than modern award</td>
<td>Existing rate</td>
<td>Modern award rate plus 60%</td>
<td>Modern award rate plus 40%</td>
<td>Modern award rate plus 20%</td>
<td>Modern award rate</td>
</tr>
</tbody>
</table>

**I want to pay my staff higher rates than the Modern Award – do I classify them at a higher rate or do I pay them over the award? How do I pay over the award?**

Employers should not classify staff at a higher level in the award in order to pay above award pay rates. Position descriptions should be assessed against the classification level descriptors. Having identified the correct minimum award classification as a starting point, it then becomes possible to consider whether to set a pay rate that is higher than the rate for that award minimum classification.

If the pay rate of the appropriate classification level is too low for market or experience reasons, then the employee can be offered an above award salary. Classifying at a higher level creates the potential for future contractual disputes and also complicates performance management as identifying the skill levels required for the job becomes confused.

The staff member’s contract or letter of offer should classify the position appropriately but include a statement about the pay rate being an above award salary rate (i.e. higher than the rate for the classification level). To prepare for the translation to the classification structures in the modern SCHADS Award employers should ensure that all current position descriptions are up to date and then assess the position description against the modern award classification structure descriptors. The translation to the classification structures in the modern SCHADS award will occur on 1/2/12 for home care and family day care classified employees, and from 1/7/2012 for SACS and crisis accommodation classified employees.

**How do I classify new roles in my organisation prior to the translation date for the modern award classification structure?**

For positions which are covered by the SACS and Crisis Accommodation classifications in the SCHADS award employers need to assess position descriptions against the classifications in both pre reform and modern
award classification structures. For all other awards, the classification system in the modern award applies. The pay rate offered must be no less than the pre reform award pay rate for the role.

Employers should prepare for the translation to the modern award classifications by ensuring position descriptions are up to date and then assessed against the classification descriptors in the modern award. It is not a simple process of comparing pay rates, it is important to actually assess the criteria in the position description against the criteria in the classification descriptors in the modern award schedules. The Fair Work Ombudsman’s website has an outline of the principles of classification translation.

What awards cover the community sector? How do I find out what awards cover my organisation?

The main award in the community sector is the Social, Community, and Home Care & Disability Services Industry Award 2010 but there are other awards which apply to community sector organisations including:

- Children’s Services Award 2010 (children’s services/child care)
- Labour Market Assistance Award 2010 (employment & training services)
- Educational Services (Post-secondary Education) Award 2010 (adult education)
- Health Professionals and Support Services Award 2010 (health services).

A community organisation may have several awards applying to its staff. Not only must the award apply to the industry your employees are working in but the award must also include the classifications which your employees work under. You can check the whether an award applies to your workplace by reading the coverage clause (clause 4) of the award, and checking the classification descriptors in the schedules to the award. Go to the Fair Work Ombudsman’s website and then to Award Finder to locate these modern awards and pay rates.

My organisation runs a social enterprise – what award should I be paying these staff on?

Many employers now run social enterprises and the relevant award will be the “industry” award.

For example

- in the retail industry (op shops, clothing shops) the modern award is the General Retail Industry Award 2010;
- in the transport industry (delivery drivers & community transport drivers,) the modern awards are the Road Transport and Distribution Award 2010 & Passenger Vehicle Transportation Award 2010 respectively.
- in the contract cleaning industry the modern award is the Contract Cleaning Services Award 2010.

The conditions of these awards already apply in full to employees in the industry, however all these awards are also in “transition” from the pre reform awards to the modern award pay rates, classifications and loadings. The transition will be complete in 2014.

The Fair Work Ombudsman’s website has information on the transitional pay rates at the Award Finder site. Employers need to check the appropriate pay rates as the pre reform award pay table will still be in “transition” to the modern award pay rates.

Employees cannot have their pay reduced by moving to the modern award rates of pay. If the transition to the modern award rate looks like a reduction, the employee’s pay rate must be at least maintained at its current level until the modern award catches up in future.
My organisation has a flat structure – how do I classify staff?

Your organisation may need to re-examine its policy. Flat structures will comply with awards only if everyone is paid correctly for the work that they do. Therefore if some staff are paid less than their classification level, then they are underpaid and the employer is exposed to the risk of underpayment claims. Employees can be “overpaid” for their classification level but they cannot be underpaid. Classifying all staff at the same classification level despite different duties and responsibilities is in breach of the award, unless all staff are classified at the highest level. Deciding that a receptionist or payroll clerk is classified at the same level as a social worker or a manager is fine, so long as everyone is paid the rate of pay applying to managers (the highest rate). This would seem an expensive way of dealing with the issue.

An organisation cannot “choose” the award or the classification they wish to pay their staff on. The industry which the employees work in determines the award which applies and the duties performed by the employees must be assessed at the appropriate classification and paid accordingly.

If I transition my staff to the Modern Award and their new pay rate is lower than their current pay rate what do I do?

If the new pay rate is lower than a staff member’s current pay rate, an employer should maintain the higher pay rate until the award pay rate “catches up.” National wage increases may still apply (either in full or with some absorption) depending on the particular classification as well as the detail of any eventual Equal Remuneration Order.

The reason for the discrepancy is that pay rates in awards in the past differed between states and industries. Now the wide range of pre reform pay rates are in “transition” towards the single set of modern award pay rates. Therefore the modern award pay rate may be higher than some employee’s current pay rate (and employers must adjust the pay rate upwards); and modern award pay rate may be also be lower than some employee’s current pay rate (and employers cannot adjust the pay rate downwards). Employees can apply to Fair Work Australia for “take home” pay orders if employers reduce their pay rate.

Do our administrative staff come under SCHADS?

Yes, administrative and clerical staff are covered by the SCHADS Award. There is a modern Clerks-Private Sector Award 2010 but it only applies to a workplace if the relevant industry award does not include classifications for clerical and administrative staff. The modern SCHADS award (and some other community sector awards) do include clerical and administrative classifications. In the case of SCHADS, the SACS classification definitions include clear descriptions of clerical, administrative and managerial roles.

I employ a person with a disability in my organisation – do I pay them under the Supported Employment Services Award?

Employees with a disability are paid under the same award which applies to the other staff in the workplace i.e. Social, Community, and Home Care & Disability Services Award 2010. The Supported Employment Services Award 2010 only applies to “supported employment services” and employees working under the classifications in that award. A supported employment service will usually be an Australian Disability Enterprise, and is defined in section 7 Disability Services Act 1986 (Cth).

Most modern awards have a supported wage provision which can be applied where disabled workers who are not able to perform the full range of duties may have their wage set by the supported wage mechanism, subject to an appropriate assessment. In the case of the SCHADS award, the relevant provisions are at Schedule F.

What Awards are linked to the modern award?

The award system has been greatly reduced with some 4000 awards replaced by 122 modern awards.
The relevant modern industry award together with the National Employment Standards (NES) now set the terms and conditions for employees in your workplace.

Underlying the SCHADS Award is a range of Victorian pre reform awards including:

- Social and Community Services (Victoria) Award 2000
- Residential and Support Services (Victoria) Award 1999
- Disability Services Award (Victoria) 1999
- Attendant Care - Victoria Award 2004
- Clerical & Administrative Employees Award (Vic) 1999

The award system is still in “transition.” Between the 1/7/2010 and 1/7/2014 there is a transitional period during which pay rates and penalty rates are in transition between the pre-reform award pay rates and the modern award rates. Each modern award is underpinned by a range of “pre-reform” awards which, in effect, still exist for the purpose of providing “transitional” pay rates, classifications and penalty rates.

Some other entitlements are also preserved if the entitlement was included in the pre reform award (i.e. accident make up pay and long service leave). By 2014 there will be full implementation of the modern awards and the “pre reform” awards will cease to have any effect on pay rates or loadings. You can find the links to the underlying “pre-reform” awards and transitional pay rates on the Fair Work Ombudsman’s website go to the tab for Awards and then locate award finder on the drop down menu.

Click on award finder, type the title of the modern award and the link to the modern award will appear. Go to the modern award name and click on the + sign on left-hand side of the name of the modern award.

This link will lead you to all the underlying pre-reform awards for the modern award. The awards listed will be from all states and territories so you need to check more than the name of the award (i.e. SACS (NSW) is called SACS (State) Award). When you locate the appropriate pre-reform award, go to the right-hand side of the pre-reform award name, and click on view. The modern and pre reform award will appear on either side of the page and the pay and conditions guide will be available in the centre of the page. However because the transitional process is different for the SCHADS award you will not find a pay and conditions guide for the pre reform SACS (Vic) or Residential and Support Services (Victoria) Award 1999 etc.

How do I manage the leave variations across the different Awards my organisation pays under? This creates inequity in my organisation.

Minimum entitlements for common leave provisions are now set out in the National Employment Standards (the NES). The NES sets minimum leave entitlements for annual leave, sick leave, carers leave, parental leave, community service leave, and long service leave. In the past leave provisions were found in awards and in legislation. These leave entitlements differed from industry to industry and state to state. Therefore staff in the workplace may be on contracts which recognise a range of different leave entitlements or your organisation may have policies or an enterprise agreement which provides a standard to all staff.

It is important to note that the NES and awards only set the minimum standard, and there is no requirement to reduce existing entitlements where they are more generous. It is always an option to provide leave arrangements which are more generous than the NES (but not less), if it suits the organisation. Therefore if you wish to provide equity across the workplace, you may choose to increase leave entitlements for some staff through an enterprise agreement or simply through the policies of the organisation.
Who is eligible for the First Aid Allowance?
The modern awards have some new allowances and the formula for some allowances has changed. Employers should read through the allowances to ensure you have been paying all relevant allowances from 1/1/2010. The first aid allowance is a new allowance for many Victorian organisations.

The first aid allowance is payable where an employee is “...required by the employer to hold a current first aid certificate; and an employee, other than a home care employee, is required by their employer to perform first aid at their workplace; or a home care employee is required by the employer to be, in a given week, responsible for the provision of first aid to employees employed by the employer”. To hold a first aid certificate is not sufficient. The other provisions of the clause must also be met. In practice it applies to an employee who is designated by management to take on the responsibility of being a workplace first aider.

I am unsure about how I treat casuals under the Modern Award?
Under the modern award (as with the pre reform awards) employees can be engaged on a full time part time or casual basis. A casual staff member is engaged for work of an intermittent and non-regular nature. There is no expectation of ongoing employment.

The casual employee is paid the ordinary rate plus a loading for each hour worked. The modern award sets a casual loading of 25%, but this will be subject to phasing in if the relevant old award had a different casual loading. Most old Victorian awards set a loading of 25% so there would not be any change. Casual employees are not normally entitled to paid leave (annual leave, personal leave (sick leave/carers leave) and compassionate leave) although they are entitled to unpaid carers leave and compassionate leave. Long term casuals may also become entitled to long service leave if there service is continuous.

The modern SCHADS award clarifies which other penalty rates apply to casual staff (for example casual staff are not entitled to weekend loadings in addition to the casual loading, although an employer can pay above the award). Again, where the modern award sets a penalty rate or loading that is different to what applied under old awards, this will be subject to phasing in. Where there is an apparent reduction, the obligation to not reduce take home pay for existing employees may also apply.

It is good practice to assess the requirements of the job before hiring employees on a casual basis. If the job is likely to continue for some time, with reasonably regular hours, even if there is some fluctuation, then a permanent part time engagement may be more appropriate, cheaper, and less likely to result in disputes about entitlements in future. If a casual employee is engaged for a lengthy period of time, employers should review the status of the employee and offer an ongoing employment. If the casual employee accepts ongoing work then the employee is no longer engaged as a casual and will then be entitled to paid leave but will no longer be entitled to the casual loading.

Do you have to have an enterprise agreement to be above award for either conditions and/or salary rates?
No, your organisation does not need to have an enterprise agreement in order to pay above award rates (or provide better than national employment standard conditions). An employer can offer above award pay rates or better conditions through either contract of employment or through organisational policies. Unions tend to prefer to have employee conditions codified in enterprise agreements as it is easier to enforce such entitlements through Fair Work Australia, the Fair Work Ombudsman and the federal Magistrates’ Court. To enforce conditions in contracts or polices employees need to access the court system which is less accessible and more expensive. On the other hand, simply applying an organisational policy to provide more generous conditions is a much easier process than engaging in enterprise bargaining.

What’s the difference between overtime and flexible hours?
Overtime means additional hours which are worked by employees at the initiative of the employer. There must be strong organisational reasons for the request and the employer should ideally cost overtime to ensure that overtime offered is within budget.

These hours are worked in addition to the employee’s ordinary hours of work and attract payment of a penalty rate if the employee works more than 38 hours per week or works outside the span of hours (6am-8pm).
The employer can pay the employee for the additional hours at the penalty rate or by agreement; the employee can accrue time (time in lieu of overtime) and take that time off by arrangement at a future date. There are conditions on time in lieu of overtime – the time must be taken within three months of accrual and if not taken it must be paid out.

A flexible working hours arrangement is where the employee initiates the additional hours of work in order to organise their workload or to allow for other non-work commitments. These arrangements must be approved by the employer and be within the ordinary span of hours and they do not attract penalty loadings. It can be a formal flexi time system or it can be an informal flexible hours arrangement but the working of flexible hours and taking of any accrued additional hours must be approved by the employer. Many organisations blur the differences between overtime and flexible hours in their in house policies and these policies should be clarified to minimise disputes between employers and employees and to comply with the award.

The two arrangements are illustrated in the table below.

<table>
<thead>
<tr>
<th>Overtime</th>
<th>Flexible hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authorised by management</td>
<td>Employee determines, within agreed parameters which must be consistent with the award (e.g. span of hours, 10 hour maximum shift)</td>
</tr>
<tr>
<td>Time off in lieu of payment for overtime (time for time) may be granted by mutual agreement and must be taken within 3 months</td>
<td>Time in lieu accrues (time for time)</td>
</tr>
<tr>
<td>Overtime rates payable for overtime if no agreement re time in lieu</td>
<td></td>
</tr>
<tr>
<td>Time in lieu not taken within 3 months, or on termination, is paid out at overtime rates</td>
<td>Time in lieu not taken on termination is paid at ordinary rates</td>
</tr>
</tbody>
</table>