

## Office of Fair and Safe Work Queensland

# Federal referral of Queensland's private sector industrial relations

## Transitional arrangements

Since 1 January 2010, all private sector employees and employers [referred employees and employers] in Queensland are now covered by the federal workplace relations system. The Queensland Government has ensured that safeguards exist so that the national system operates in the best interests of all Queensland employers and employees.

For referred Queensland employees and employers, the following *transitional arrangements* have been put in place:

- Queensland's awards and certified agreements have been referred to the national system, as national federal awards and agreements, with the same wages and conditions
- Queensland's referred State awards and certified agreements [instruments] have been subject to the national employment standards and federal minimum wage where the instrument provides a lesser entitlement
- A referred Queensland award (other than an employer enterprise award) continues to apply as a federal instrument during 2010. After that time, a modern award may cover the relevant employees and employers
- between 1 January 2010 and 31 December, 2010, Fair Work Australia (FWA) is required to consider whether a modern award should be varied to provide appropriate transitional arrangements for incoming Queensland employees and employers.
- Referred State awards will be replaced by modern awards on 1 January 2011
- the Fair Work (Transitional Provisions and Consequential Amendments) Act provides that where an employee's take-home pay is reduced due to the movement to a modern award, the employee may make application to Fair Work Australia for a take-home pay order which may cover the loss of earnings.
- Queensland employees who were 'award-free' may have become covered by a modern award since 1 January 2010
- State Certified Agreements since 1 January 2010 are now called Division 2b State Agreements and continue to apply until terminated in accordance with the agreement or otherwise by consent of the parties.

Modern awards have had application since 1 January 2010 for Queensland employees already in the federal jurisdiction prior to the referral. Modern awards may contain transitional provisions which allowed employers to wait until 1 July 2010 to start paying the new base rates of pay and certain loadings and penalties under the modern award. These pay rates will be phased in over a period of four years until the full modern award rate applies on the first full pay period on or after 1 July 2014.

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### **Queensland's statutory minima**

Amendments to the *Industrial Relations Act 1999* (Queensland) [IR Act] have already taken effect to deem that the minimum statutory entitlements set out in Chapter 2 [General Employment Conditions] of the IR Act are terms of Queensland industrial awards and agreements, unless otherwise provided. These amendments ensure that entitlements, such as cultural leave and carer's leave for casual employees, continue for the 12 month transition period.

### **Non private sector entities returning to State regulation [State and Local Government]**

Chapter 16 of the *Industrial Relations Act 1999* (Queensland) sets out transitional arrangements to preserve the application and operation of federal industrial awards and agreements for employers moving from the federal system back to the State system.

The transitional arrangements commenced on 1 January 2010 and provide that:

- the federal award or agreement continues to apply in the same way and with the same employment conditions, after the transition
- statutory entitlements set out in chapter 2 of the IR Act have become terms of the new State award or agreement unless otherwise provided, or where the new State award or agreement has no provision about that particular entitlement (i.e. where it is silent)
- an employee's period of service and entitlements accrued are recognised and transferred into the State system, as long as the employee has not already received the benefit of an entitlement
- the Queensland Industrial Relations Commission may amend or revoke any term of the new award or agreement instrument if it satisfied that it is fair and reasonable to do so.
- transitional State awards and agreements are to expire on whichever date is earlier of either 1 January 2012 or the expiry date under the federal system.