

s.22 - Irrelevant to request

**From:** FWO - Transition Assist  
**Sent:** Tuesday, 15 November 2011 12:48  
**To:** 'Samios, Kirsten'  
**Subject:** RE: Qld Apprentices - Allowances and T&Cs - Request for Transitional Advice: Reference 4392951  
**Attachments:** Enquiry Reference 4392951.docx

Dear Ms Samios

Please find attached a response to your enquiry to Transition Assist. We apologise for the delay in responding.

We trust this information is of assistance.

If you have any further queries or require clarification about the information provided in this letter, please quote the reference number on the attached response and email [transitionassist@fwo.gov.au](mailto:transitionassist@fwo.gov.au)

Kind regards

Alex Kym  
 Knowledge Services  
 Fair Work Ombudsman

**Fair Work Infoline: 13 13 94**

[www.fairwork.gov.au](http://www.fairwork.gov.au)

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**From:** Samios, Kirsten [mailto:k.samios@hia.com.au]  
**Sent:** Thursday, 1 September 2011 6:02 PM  
**To:** WOLFSON,Alexander  
**Subject:** Qld Apprentices - Allowances and T&Cs

Good afternoon Alex,

I sent the below to Alex Kym, but am hoping you can assist me, after receiving his out of office auto-response.

I have a query relating to Queensland apprentices.

As you would know, apprentices in Qld are bound by the *Order - Apprentices' And Trainees' Wages And Conditions (excluding Certain Queensland Government Entities) 2003*. We understand that the effect of this will freeze the relevant NAPSA award (eg AN140043) for the purpose of apprentice rates of pay calculations. Could you please confirm whether the allowances and conditions of employment are also to be derived from the frozen pre-modern award, or whether we would need to look to the otherwise applicable Modern Award? An allowance we are facing a lot of concern about in this regard is travel allowance.

Thank you!

Kind Regards,

Kirsten Samios  
 InfoCentre Manager



Housing Industry Association Ltd  
 14 Edmondstone Street  
 South Brisbane Qld 4101  
 p 07 3226 4717  
 f 07 3846 1241  
 e [k.samios@hia.com.au](mailto:k.samios@hia.com.au)  
[hia.com.au](http://hia.com.au)

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Freedom of Information Act  
by the Fair Work Ombudsman

Reference Number: 4392951  
15 November 2011

Ms Kirsten Samios  
[k.samios@hia.com.au](mailto:k.samios@hia.com.au)

Dear Ms Samios,

Thank you for your enquiry regarding the application of allowances and conditions of employment for apprentices in Queensland who are bound by the Order – Apprentices' and Trainees' Wages and Conditions (Excluding Certain Queensland Government Entities) 2003 [AN140326] (the Order). I apologise for the delay in responding.

Specifically, you have enquired about apprentices under the Building Construction Industry Award – State 2003 [AN140043] (the Building Construction pre-modern award).

In our view, where the Order and a relevant NAPSA are preserved, all the terms and conditions of employment, including allowances, from the NAPSA continue to apply in lieu of the modern award.

### **Allowances and conditions of employment under the Queensland apprentices Order**

Regulation 3B.02 of the Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009 provides the method by which the Order and a NAPSA may be preserved and continue to apply as an award-based transitional instrument (ABTI).

The regulation also provides that a modern award does not apply to an employee while such and ABTI continues to apply. As the modern award does not apply, all conditions of employment will continue to come from the ABTI.

Therefore, in the circumstances of your enquiry, the conditions of employment for apprentices covered by the Building Construction pre-modern award will be found in both the Building Construction pre-modern award and the Order, with the calculation of the travel allowance, as requested in your enquiry, to be determined by applying the specified percentage under clause 6.2 of Schedule 4 of the Order, reproduced below, to the relevant rate under the Building Construction pre-modern award:

#### 6.2 Certain Allowances Specified in the *Building Construction Industry Award - State 2003*

The following provisions shall apply to apprentices who are employed under the *Building Construction Industry Award - State 2003*.

##### **6.2.1 Fares and Travel Allowances:**

##### **(a) Apprentices Roof Tilers:**

Wage Level 1	80% of tradesperson's allowance
Wage Level 2	85% of tradesperson's allowance

Wage Level 3	90% of tradesperson's allowance
Wage Level 4	95% of tradesperson's allowance

(b) Other Apprentices:

Wage Level 1	75% of tradesperson's allowance
Wage Level 2	85% of tradesperson's allowance
Wage Level 3	90% of tradesperson's allowance
Wage Level 4	95% of tradesperson's allowance

(c) The foregoing allowances shall be calculated to the nearest 5 cents. 2 cents or less shall be disregarded.

We trust this information has been of assistance. If you require further clarification, please quote the reference number above and email [transitionassist@fwo.gov.au](mailto:transitionassist@fwo.gov.au).

Yours sincerely

Alex Kym  
Knowledge Services Team  
Fair Work Ombudsman

**Important note: Disclaimer**

FWO is committed to providing useful, reliable information to help you understand your rights and obligations under workplace laws.

There are a number of factors that might affect the applicability of the information written here

These include:

- whether you have provided us with all the relevant and correct information about your situation;
- changes in your circumstances; and
- changes in the law.

It is your responsibility to comply with workplace laws that apply to you.

FWO's information is not legal advice and FWO does not accept legal liability arising from or connected to the accuracy, reliability, currency or completeness of this information. Therefore, you may wish to seek independent professional advice to ensure all the factors relevant to your circumstances have been properly considered.

Reference Number: 4656883  
3 February 2012

Katrina  
[infocentre@hia.com.au](mailto:infocentre@hia.com.au)

Dear Katrina

Thank you for your enquiry in relation to the current rate of pay for a first year carpentry apprentice employed in Queensland.

Further to your telephone conversation with Maria Evangelou from this office on 30 January 2012, you have advised that the employer in question is transitioning from the Building and Construction Industry Award - State 2003 [RA140043] (the **Division 2B Award**) to the Building and Construction General On-site Award 2010 [MA000020] (the **Modern Award**).

You have also advised that the employer did not employ trainees or apprentices prior to 1 January 2010.

Based on the information provided, the model transitional provisions contained in clause A.8 at Schedule A to the Modern Award will apply to the calculation of the minimum apprentice rate of pay you have requested.

We have set out our method for calculating the minimum rate of pay for a first year carpentry apprentice and some additional information regarding Division 2B award provisions below.

### The Division 2B exception

The model transitional provisions at Schedule A to the Modern Award contain an overriding exception to the transitional arrangements for Division 2B employers in certain circumstances. Specifically, clause A.8.4 and A.8.5 provide that

**A.8.4** Despite clause A.8.3, where a minimum wage, loading or penalty rate in a Division 2B State award immediately prior to 1 February 2011 was lower than the corresponding minimum wage, loading or penalty rate in this award, nothing in this Schedule requires a Division 2B employer to pay more than the minimum wage, loading or penalty rate in this award.

**A.8.5** Despite clause A.8.3, where a minimum wage, loading or penalty rate in a Division 2B State award immediately prior to 1 February 2011 was higher than the corresponding minimum wage, loading or penalty rate in this award, nothing in this Schedule requires a Division 2B employer to pay less than the minimum wage, loading or penalty rate in this award.

Thus in some circumstances where this exception applies, the employer may be obliged to pay the full Modern Award rate instead of the transitional rate.

For completeness we note that the 'transitional rate' refers to the minimum rate of pay, as phased, from the relevant NAPSA to the Modern Award that would have applied to the

employer had they been a 'national system employer' at 27 March 2006. In the scenario provided, the relevant NAPSA would have been the Building and Construction Industry Award - State 2003 [AN140043 - Qld].

This may occur in two circumstances, as outlined below:

1. Where the minimum wage, penalty rate or loading in the former Division 2B award is lower than the modern award equivalent at 1 July 2010, but the transitional rate is higher than the modern award equivalent, the full modern award rate will apply.
2. Where the minimum wage, penalty rate or loading in the former Division 2B award is higher than the modern award equivalent at 1 July 2010, but the transitional rate is lower than the modern award equivalent, the full modern award rate will apply.

Hence, where the modern award rate falls between the Division 2B rate and the transitional rate, the full modern award rate will apply. We note that this exception applies for minimum rates of pay calculated from the first full pay period on or commencing 1 July 2010 only.

Based on the scenario provided by you, we have included the following example which illustrates how to determine whether the Division 2B exception applies:

Respective minimum rates of pay for a first year apprentice carpenter	
Modern award rate of pay	\$9.30
Transitional base rate of pay	\$8.13
Division 2B award rate of pay	\$7.93

As indicated in the example provided above, the Modern Award rate did not fall between the Division 2B rate and the transitional rate at 1 July 2010. On this basis, the exception would not apply and the employee would not be obliged to pay the full modern award rate.

Rather the employer in question is obliged to pay the relevant transitional rate of pay.

For your information we have set out the calculations for determining the current minimum rate of pay for a first year carpentry apprentice, based on the information provided by you, below.





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**Calculating the first year apprentice rate for a former Division 2B employer who did not employ apprentices prior to 1 January 2010:**

**Step 1: Find the base rate of pay that would have been applicable in the relevant NAPSA:**

The relevant NAPSA, and corresponding Australian Pay and Classification Scale in these circumstances would be the Building and Construction Industry Award - State 2003 [AN140043 - Qld]

**NAPSA rate:**

CW3 Carpenter:	\$18.69
1 <sup>st</sup> Year apprentice %:	40%

**Hourly rate: \$7.48**

**Step 2: Find the base rate of pay that would have been applicable in the Modern Award on 1 January 2010 including the applicable all-purpose allowance:**

**1 January 2010 Modern Award rate:**

CW3 Carpenter:	\$637.60
1 <sup>st</sup> Year apprentice %:	45%
1 <sup>st</sup> year apprentice rate:	\$286.92
Tool allowance:	\$25.80
Industry allowance:	\$23.59
Special allowance:	\$3.47

**TOTAL: \$339.78**  
**Hourly rate: \$8.94**

**Step 3: Find the current base rate of pay in the Modern Award (i.e. the rate at 1 July 2011) including the applicable all purpose allowances:**

**1 Jan 2011 Modern Award rate:**

CW3 Carpenter:	\$686.20
1 <sup>st</sup> Year apprentice %:	45%
1 <sup>st</sup> year apprentice rate:	\$308.79
Tool allowance:	\$27.69
Industry allowance:	\$25.39
Special allowance:	\$3.47

**TOTAL: \$365.34**  
**Hourly rate: \$9.61**



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### Step 4: Calculate the transitional rate of pay

#### CURRENT RATE CALCULATIONS:

##### Step 1:

1 Jan 2010 Modern Award rate – NAPSA rate = Transitional amount  
 $\$8.94 - \$7.48 = \$1.46$

##### Step 2:

Transitional amount x 60%  
 $\$1.46 \times 60\% = \$0.87$

##### Step 3:

1 July 2011 Modern Award rate – 60% of Transitional amount  
 $\$9.61 - \$0.87 = \$8.74$

**Current transitional rate as at 1 July 2011: \$8.74**

We trust this information has been of assistance. If you require clarification please quote the reference number above and email [transitionassist@fwo.gov.au](mailto:transitionassist@fwo.gov.au).

Yours sincerely

Alex Kym  
 Transition Assist Team  
 Fair Work Ombudsman

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**From:** FWO - Transition Assist  
**Sent:** Monday, 12 March 2012 12:48  
**To:** 'a.matheson@hia.com.au'  
**Subject:** Request for Transitional Advice: Employer association membership and phasing  
**Attachments:** Response 4425864.docx

Dear Ms Matheson,

Please find attached a response to your enquiry to Transition Assist. We apologise for the delay in providing you with this response.

We trust this information is of assistance.

If you have any further queries or require clarification about the information provided in this letter, please quote the reference number on the attached response and email [transitionassist@fwo.gov.au](mailto:transitionassist@fwo.gov.au)

Kind regards

Alex Kym  
Knowledge Services  
Fair Work Ombudsman

**Fair Work Infoline: 13 13 94**

**[www.fairwork.gov.au](http://www.fairwork.gov.au)**

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Reference Number: 4425864  
12 March 2012

Ms Alana Matheson  
a.matheson@hia.com.au

Dear Ms Matheson,

Thank you for your email in relation to which pay scale to transition from when phasing wage rates under the Building and Construction General On - site Award 2010 (the modern award). I understand that you specifically wish us to address various scenarios involving employers who have changed their employer association membership over time. I sincerely apologise for the delay in responding.

The modern award includes the model transitional schedule at Schedule A.

Clauses A.2.1, A.3.1, A.5.1, A.6.1 and A.7.1 of the model phasing schedule require an assessment of the actual (or potential) industrial instruments that applied (or could have applied) immediately prior to 1 January 2010. Similarly, Clause A.8.3 requires identification of the industrial instrument that set minimum wages, loadings and penalty rates if the employer 'had been a national system employer immediately prior to 1 January 2010'. In our view, the phrase 'immediately prior' means 'as at 31 December 2009'.

On this basis, it is our view that the transitional provisions operate to phase employees' entitlements from the instruments that applied (or would have applied) to the business, on 31 December 2009. Assessment of which instruments to transition from occurs only once, when the employer begins to apply the modern award. There is no requirement to reassess the instrument to phase from on the basis that the employer's membership status changed after 1 January 2010.

As outlined in our response to you on 19 September 2011, reference 4421554, a business could not generally become bound to a federal award or NAPSA after 26 March 2006. However, they could become bound to an APCS, including an APCS derived from a federal award, if they were national system employers.

We have attached a table to assist you in determining the appropriate instrument to phase from where membership of an employer organisation can bind employers to a federal award and the employer's membership status has changed over time. We have included penalty phasing as well as wage phasing for your convenience.

Please note that there are some circumstances where an employer may be phasing penalties based on one pre-WorkChoices instrument and wages based on another.

We trust this information has been of assistance. If you have any further queries or require clarification about the information provided in this letter, please quote the reference number above and email [transitionassist@fwo.gov.au](mailto:transitionassist@fwo.gov.au).

Yours sincerely



# Fair Work

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Alex Kym  
Knowledge Services Team  
Fair Work Ombudsman

**Important note: Disclaimer**

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- changes in your circumstances; and
- changes in the law.

It is your responsibility to comply with workplace laws that apply to you.

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### Determining which industrial instrument to phase from

Use these tables to help decide which industrial instrument to phase from where membership of an employer organisation can bind employers to a federal award and membership changes over time.

**PLEASE NOTE:** The tables apply only to businesses that are not cited respondents to a federal award

Glossary of terms used throughout these tables:

<b>Federal Award Pay Scale</b>	An Australian Pay and Classification Scale derived from a federal award on 27 March 2006
<b>Federal Pre-reform award</b>	A federal award as preserved for constitutional corporations on 27 March 2006
<b>Transitional federal award</b>	A federal award as preserved for non constitutional corporations on 27 March 2006
<b>NAPSA Pay Scale</b>	An Australian Pay and Classification scale derived from a former state award on 27 March 2006
<b>NAPSA</b>	A former state award preserved for constitutional corporations on 27 March 2006
<b>Div 2B</b>	All of the terms of a Division 2B State award applying to a Division 2B employer continued in effect until the end of the full pay period commencing before 1 February 2011. From the first full pay period commencing on or after 1 February 2011, these employers phase penalties from the NAPSA and phase wages & casual loadings from the NAPSA Pay Scale.

### Referring States other than Victoria

**Where the employer was a constitutional corporation and in existence prior to 27 March 2006**

	Immediately prior to 27 March 2006	at 31 December 2009	19 September 2011 (current date)	Penalties Phase from	Wages & casual loadings phase from
<b>Association membership status (eg MBA or AIG)?</b>	yes	yes	yes	Federal Pre-reform award	Federal Award Pay Scale
	no	yes	yes	NAPSA	Federal Award Pay Scale
	no	no	yes	NAPSA	NAPSA Pay Scale
	no	yes	no	NAPSA	Federal Award Pay Scale
	yes	no	no	Federal Pre-reform award	NAPSA Pay Scale
	yes	yes	no	Federal Pre-reform award	Federal Award Pay Scale

*Where the employer was unincorporated and in existence prior to 27 March 2006*

	Immediately prior to 27 March 2006	at 31 December 2009	19 September 2011 (current date)	Penalties Phase from	Wages & casual loadings phase from
Association membership status (eg MBA or AIG)?	yes	yes	yes	Transitional federal award	Transitional federal award
	no	yes	yes	Div 2B	Div 2B
	no	no	yes	Div 2B	Div 2B
	no	yes	No	Div 2B	Div 2B
	yes	no	No	Div 2B	Div 2B
	yes	yes	no	Transitional federal award	Transitional federal award

*Where the employer was a constitutional corporation and formed between 28 March 2006 and 31 December 2009*

	Immediately prior to 27 March 2006	at 31 December 2009	19 September 2011 (current date)	Penalties Phase from	Wages & casual loadings phase from
Association membership status (eg MBA or AIG)?	n/a	yes	yes	Zero	Federal Award Pay Scale
	n/a	yes	yes	Zero	Federal Award Pay Scale
	n/a	no	yes	Zero	NAPSA Pay Scale
	n/a	yes	no	Zero	Federal Award Pay Scale
	n/a	no	no	Zero	NAPSA Pay Scale
	n/a	yes	no	Zero	Federal Award Pay Scale

*Where the employer was unincorporated and formed between 28 March 2006 and 31 December 2009*

	Immediately prior to 27 March 2006	at 31 December 2009	19 September 2011 (current date)	Penalties Phase from	Wages & casual loadings phase from
Association membership status (eg MBA or AIG)?	n/a	yes	yes	Div 2B	Div 2B
	n/a	no	yes	Div 2B	Div 2B
	n/a	no	no	Div 2B	Div 2B
	n/a	yes	no	Div 2B	Div 2B

*Where the employer was a constitutional corporation and formed after 1 January 2010*

	Immediately prior to 27 March 2006	at 31 December 2009	19 September 2011 (current date)	Penalties Phase from	Wages & casual loadings phase from
Association membership status (eg MBA or AIG)?	n/a	n/a	yes	Zero	NAPSA Pay Scale
	n/a	n/a	no	Zero	NAPSA Pay Scale

*Where the employer was unincorporated and formed after 1 January 2010*

	Immediately prior to 27 March 2006	at 31 December 2009	19 September 2011 (current date)	Penalties Phase from	Wages & casual loadings phase from
Association membership status (eg MBA or AIG)?	n/a	n/a	yes	Zero	No phasing - Full modern award rate applies
	n/a	n/a	no	Zero	No phasing - Full modern award rate applies



### Victoria

Phasing applies differently in Victoria because the federal award was common rule. Victoria's referral of powers also led to slightly different provisions applying to their non-constitutional corporations.

*Where the employer was a constitutional corporation and in existence prior to 27 March 2006*

	Immediately prior to 27 March 2006	at 31 December 2009	19 September 2011 (current date)	Penalties Phase from	Wages & casual loadings phase from
Association membership status (eg MBA or AIG)?	yes	yes	yes	Federal Pre-reform award	Federal Award Pay Scale
	no	yes	yes	Federal Pre-reform award	Federal Award Pay Scale
	no	no	yes	Federal Pre-reform award	Federal Award Pay Scale
	no	yes	no	Federal Pre-reform award	Federal Award Pay Scale
	yes	no	no	Federal Pre-reform award	Federal Award Pay Scale
	yes	yes	no	Federal Pre-reform award	Federal Award Pay Scale

*Where the employer was unincorporated and in existence prior to 27 March 2006*

	Immediately prior to 27 March 2006	at 31 December 2009	19 September 2011 (current date)	Penalties Phase from	Wages & casual loadings phase from
Association membership status (eg MBA or AIG)?	yes	yes	yes	Transitional federal award	Transitional federal award
	no	yes	yes	Transitional federal award	Transitional federal award
	no	no	yes	Transitional federal award	Transitional federal award
	no	yes	No	Transitional federal award	Transitional federal award
	yes	no	No	Transitional federal award	Transitional federal award
	yes	yes	no	Transitional federal award	Transitional federal award

*Where the employer was a constitutional corporation and formed between 28 March 2006 and 31 December 2009*

	Immediately prior to 27 March 2006	at 31 December 2009	19 September 2011 (current date)	Penalties Phase from	Wages & casual loadings phase from
Association membership status (eg MBA or AIG)?	n/a	yes	yes	Zero	Federal Award Pay Scale
	n/a	yes	yes	Zero	Federal Award Pay Scale
	n/a	no	yes	Zero	Federal Award Pay Scale
	n/a	yes	no	Zero	Federal Award Pay Scale
	n/a	no	no	Zero	Federal Award Pay Scale
	n/a	yes	no	Zero	Federal Award Pay Scale

*Where the employer was unincorporated and formed between 28 March 2006 and 31 December 2009*

	Immediately prior to 27 March 2006	at 31 December 2009	19 September 2011 (current date)	Penalties Phase from	Wages & casual loadings phase from
Association membership status (eg MBA or AIG)?	n/a	yes	yes	Transitional federal award	Transitional federal award
	n/a	no	yes	Transitional federal award	Transitional federal award
	n/a	no	no	Transitional federal award	Transitional federal award
	n/a	yes	no	Transitional federal award	Transitional federal award

*Where the employer was a constitutional corporation and formed after 1 January 2010*

	Immediately prior to 27 March 2006	at 31 December 2009	19 September 2011 (current date)	Penalties Phase from	Wages & casual loadings phase from
Association membership status (eg MBA or AIG)?	n/a	n/a	yes	Zero	Federal Award Pay Scale
	n/a	n/a	no	Zero	Federal Award Pay Scale



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*Where the employer was unincorporated and formed after 1 January 2010*

	Immediately prior to 27 March 2006	at 31 December 2009	19 September 2011 (current date)	Penalties Phase from	Wages & casual loadings phase from
<b>Association membership status (eg MBA or AIG)?</b>	n/a	n/a	yes	Transitional federal award	Transitional federal award
	n/a	n/a	no	Transitional federal award	Transitional federal award

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s.22 - Irrelevant to request

**From:** FWO - Transition Assist  
**Sent:** Friday, 16 March 2012 10:40  
**To:** 'infocentre@hia.com.au'  
**Subject:** Request for Transitional Advice: Reference 4727773  
**Attachments:** Enquiry Reference 4727773.docx

Good morning Patrick,

Please find attached our response to your recent enquiry.

We trust this information is of assistance.

If you have any further queries or require clarification about the information provided in this letter, please quote the reference number on the attached response and email [transitionassist@fwo.gov.au](mailto:transitionassist@fwo.gov.au)

Kind regards

Alex Kym  
Knowledge Services  
Fair Work Ombudsman

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Reference Number: 4727773  
16 March 2012

Patrick MacDonald  
[infocentre@hia.com.au](mailto:infocentre@hia.com.au)

Dear Patrick,

Thank you for your enquiry and further to our previous response dated 3 February 2012 under Reference Number 4656883.

You have sought advice in regard to:

1. The preservation of the Order – Apprentices' and Trainees' Wages and Conditions (Excluding Certain Queensland Government Entities) 2003 (the Order) beyond 1 January 2010.
2. The preservation of the Supply of Tools to Apprentices Order (the Tools Order).
3. The reasons why the apprentice, as described in enquiry Reference 4656883:
  - a. is not covered by the Tools Order, and
  - b. receives a rate of pay that is as calculated in accordance with the transitional arrangements under the modern award.

In regard to the above we provide the following response.

### Overview

Modern awards commenced operation on 1 January 2010. Pre-modern award instruments that covered constitutional corporations ceased to have application where the applicable modern award was capable of covering an employer and their employees. In relation to State referral employers, the applicable Division 2B State award continued to operate until 31 December 2010.

However, the *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009* (FW (TPCA) Regulations) prescribed certain pre-modern awards and Division 2B State awards to continue to apply, to the exclusion of a modern award, for employees engaged under competency-based training arrangements. Primarily, competency-based training arrangements applied to apprentices and trainees within the State of Queensland.

## Queensland Referral of Industrial Relations Powers

### 1. Constitutional Corporations

Generally, pre-modern award instruments cease to apply when an applicable modern award comes into operation. The FW (TPCA) Regulations provides an exception to this in relation to apprentices and trainees employed by certain constitutional corporations.

#### Part 5 Continued coverage under award-based transitional instruments

##### 16 Continued coverage

- (1) Despite item 29 of Schedule 3, an award-based transitional instrument that:
  - (a) sets minimum terms and conditions for an employee to whom a training arrangement applies; and
  - (b) either:
    - (i) provides for competency-based wage progression; or
    - (ii) provides solely for the provision of tools for use by apprentices;and
  - (c) covered an employee or employer immediately before 1 January 2010; continues to cover the employee or employer.
- (2) Despite the rule in item 11 of Schedule 9, an employee who is covered by the award-based transitional instrument is also covered by a transitional APCS that would have covered the employee immediately before 1 January 2010.
- (3) The award-based transitional instrument and transitional APCS also cover an employee to whom a training arrangement applies:
  - (a) who is employed, on or after 1 January 2010, by an employer who is covered by the award based transitional instrument; and
  - (b) who would have been covered by the award-based transitional instrument and transitional APCS under subitems (1) and (2) if the employee had been employed immediately before 1 January 2010.
- (4) For subitems (1) to (3), the award-based transitional instrument and transitional APCS only cover an employer in respect of an employee to whom a training arrangement applies.
- (5) Despite section 47 of the FW Act, a modern award that would, but for this subitem, apply to the employee does not apply for the period during which the award-based transitional instrument covers the employee.

The effect of these provisions is that:

- the Order – Apprentices' and Trainees' Wages and Conditions (Excluding Certain Queensland Government Entities) 2003 [AN140326], and
- the Supply of Tools Order, and
- the relevant award-based transitional instrument (i.e NAPSA) and transitional minimum wage instrument (i.e Pay Scale)



Will all be preserved beyond 1 January 2010 and will operate to the exclusion of an otherwise applicable modern award. This occurs where the following criteria are met.

1. The employer was covered by the Order **and**
2. The employer employed at least 1 apprentice or trainee immediately before 1 January 2010 **and**
3. The apprentice or trainee is covered by:
  - a) A provision of the Order which provides competency-based wage progression **or**
  - b) A provision of the Order which provides competency-based progression and the Tools Order **or**
  - c) A provision of the Order which provides time-based wage progression and the Tools Order

## 2. Division 2B State Awards

As noted above, Division 2B State Awards operated only until 31 December 2010. However an exception to this is contained within the FW (TPCA) Regulations which covers apprentices and trainees employed by certain Division 2B State award employers.

### Part 4A Continued application of certain transitional instruments

#### 36A Division 2B State awards

- (1) Despite subitem 21(1) of Schedule 3A, a Division 2B State award that is affected, in the same way as a source State award is affected immediately before the Division 2B referral commencement, by an order, decision or determination of a State industrial body that:
  - (a) sets minimum terms and conditions for an employee to whom a training arrangement applies; and
  - (b) **either:**
    - (i) provides for competency-based wage progression; or
    - (ii) provides solely for the provision of tools for use by apprentices;

does not terminate at the end of 12 months after the Division 2B referral commencement.
- (2) The Division 2B State award continues to operate only to the extent that it covers:
  - (a) an employee to whom a training arrangement applies; and
  - (b) an employer in respect of an employee to whom a training arrangement applies; and
  - (c) an employee, to whom a training arrangement applies, who is:
    - (i) an employee of an employer described in paragraph (b); and

- (ii) employed after the Division 2B referral commencement.

The effect of these provisions is that:

- the Order – Apprentices' and Trainees' Wages and Conditions (Excluding Certain Queensland Government Entities) 2003 and
- the Supply of Tools Order, and
- the Division 2B State award

Will all be preserved beyond 1 January 2011 and will operate to the exclusion of an otherwise applicable modern award. This occurs where the employers and the following criteria are met.

1. The employer was covered by a Division 2B State Award **and**
2. The employer employed at least 1 apprentice or trainee immediately before 1 January 2011 **and**
3. The apprentice or trainee is covered by:
  - a) A provision of the Order which provides competency-based wage progression **or**
  - b) A provision of the Order which provides competency-based wage progression and the Tools Order **or**
  - c) A provision of the Order which provides time-based wage progression and the Tools Order

#### **When is a QLD apprentice not covered by the Tools Order**

The Tools Order prescribes the retail value of Tools to be supplied to an apprentice by the employer per year of an apprenticeship term, or for the entire apprenticeship term.

The terms and conditions of the Tools Order do not apply to following categories of employers:

- Post-WorkChoices constitutional corporations,
- Pre-Work Choices constitutional corporations who did not employ any apprentices or trainees immediately prior to 27 March 2006,
- State reference employers (Division 2B employers) who did not employ any apprentices immediately prior to 1 January 2011 and who were not covered by a Division 2B State award,
- Sole traders and partnerships established after 1 January 2010.

**Operation of the Tool Order in respect of the apprentice described in previous enquiry**

In relation to our response to your previous enquiry (provided under Reference Number 4656883) it is our understanding that the employer in question was not employing apprentices immediately prior to 1 January 2011. As such, in our view, neither the Order nor the Tool Order will apply. This is because the employer was not employing at least one apprentice immediately prior to 1 January 2011 as required by the FW (TPCA) Regulations.

*(We note that there is a typographical error in our correspondence in which the relevant date is stated as 1 January 2010 instead of 1 January 2011. We apologise for the error).*

In these circumstances the rates are calculated in accordance with the transitional provisions under the modern award, as has been detailed in our previous response.

We trust this information has been of assistance. If you require clarification please quote the reference number above and email [transitionassist@fwo.gov.au](mailto:transitionassist@fwo.gov.au)

Yours sincerely

Alex Kym  
Knowledge Services Team  
Fair Work Ombudsman

**Important note: Disclaimer**

FWO is committed to providing useful, reliable information to help you understand your rights and obligations under workplace laws.

There are a number of factors that might affect the applicability of the information written here

These include:

- whether you have provided us with all the relevant and correct information about your situation;
- changes in your circumstances; and
- changes in the law.

It is your responsibility to comply with workplace laws that apply to you.

FWO's information is not legal advice and FWO does not accept legal liability arising from or connected to the accuracy, reliability, currency or completeness of this information. Therefore, you may wish to seek independent professional advice to ensure all the factors relevant to your circumstances have been properly considered.

[New Search](#)**Enquiry Details - 4917640****Logged Date:** 19/06/2012 4:33:02 PM**Closure Date:** 20/06/2012 3:52:30 PM**FWIL Reference:****Closure Reasons:** Advice Provided

**Enquiry Summary:** TRANSITION ASSIST: Order for the Supply of Tools (Qld). - Can an employer pay an employee an amount equal to the value of tools specified in the Order for the Supply of Tools in lieu of actually providing the tools? (Please see Tool Order attached to the linked instrument)

**Enquiry Action:** [Call Closed - Resolved Reason : Advice Provided]  
 Advised client that the Qld Order (cl. 4.13.1) and Tool Order both indicate that an employer must provide tools of the trade. There does not appear to be any relevant instrument providing that an employer may pay an employee an amount in lieu of providing tools. Advised client that the Tool Order is not overly prescriptive - i.e. it does not provide much detail, other than that an employer must supply tools. There is no guidance on how the purchase of tools should take place. Provided reference number.

**Enquiry Type****Enquirer Types:** Employer Agent**Enquiry Types:** Condition/Other**Channel:** Phone**Source:** Service Desk**Enquirer Details****Contact First Name:** Laura**Contact Surname:** Cooper**Telephone:** 07 3021 8880**Email:** l.cooper@hia.com.au**Suburb:** Brisbane**State:****Employment Status:** Other/Unspecified**Duties:** N/A**Organisation Details****ABN:** 99004631752**Trading Name:** Unknown**Legal Name:** HOUSING INDUSTRY ASSOCIATION LIMITED**Previous Name:** HOUSING INDUSTRY ASSOCIAT**Business Address:** 79 CONSTITUTION AVE, CAMPBELL**Suburb:****Postcode:** 2612**Organisation State:** ACT**Phone:****Employer Association:** No relevant association**Constitutional Corporation:** Not Required**Industry:** Business and Professional Associa**Pre-Post Reform:** Not Required**Industrial Instrument:** Division 2 B Award**Call History**

Action Date	Officer	Portal	Security Profile	Action Description
19/06/2012 4:33:02 PM	Cossart, Katherine	Yes	Unspecified	[Knowledge Entry Linked to Call]
19/06/2012 4:57:49 PM	Cossart, Katherine	No	Unspecified	[Call Deferred : Pending Your Action] Initial thoughts - no.
20/06/2012 1:45:33 PM	Cossart, Katherine	Yes	Unspecified	[Call Actioned by Cossart, Katherine]
20/06/2012 3:52:29 PM	Cossart, Katherine	No	Unspecified	[Call Closed - Resolved Reason : Advice Provided] Advised client that the Qld Order (cl. 4.13.1) and Tool Order both indicate that an employer must provide tools of the trade. There does not appear to be any relevant instrument providing that an employer may pay an employee an amount in lieu of providing tools. Advised client that the Tool Order is not overly prescriptive - i.e. it does not provide much detail, other than that an employer must supply tools. There is no guidance on how the purchase of tools should take place. Provided reference number

**Attachments**

No attachments

## Knowledge Articles

Type	Reference Number	Title
Instrument	K86167	Building Construction Industry Award – State 2003
Instrument	K113723	Order – Apprentices and Trainees Wages and Conditions (excluding Certain Queensland Government Entities) 2003

Released under the  
Freedom of Information Act  
by the Fair Work Ombudsman

New Search

## Enquiry Details - 4962317

Logged Date: 10/07/2012 3:28:03 PM

Closure Date: 10/07/2012 4:19:17 PM

FWIL Reference:

Closure Reasons: Advice Provided

**Enquiry Summary:** QS. Customer enquired about Industrial Instrument coverage. Specifically, does an apprentice covered by the Order in Qld receive allowances in accordance with the Modern Award?

**Enquiry Action:** [Call Closed - Resolved Reason : Advice Provided]  
Advised client that certain employers in Queensland who engaged employees on competency-based training arrangements continue to be covered by: • The Order - Apprentices' and Trainees' Wages and Conditions (Excluding Certain Queensland Government Entities) 2003 (Order); and • Their relevant pre-modern award and associated transitional Australian Pay and Classification Scale (Pay Scale). Where this is the case a relevant pre-modern award, Pay Scale and the Order will be preserved and continue to apply to an apprentice and their employer, to the exclusion of a modern award if all the following criteria are met: 1. The employer was covered by an award-based transitional instrument; and 2. The employer engaged at least one apprentice or trainee immediately before 1 January 2010; and 3. The pre-modern award or the relevant Schedule of the Order provides: a. Competency-based wage progression; or b. Time based training arrangements and the Order for the Supply of Tools to Apprentices (Tools Order) applies. Advised client that in such a case, the modern award will not apply. Therefore any applicable allowances will come from the Order or the relevant NAPSA. Provided reference number.

## Enquiry Type

Enquirer Types: Employer Agent

Enquiry Types: Condition/Coverage

Channel: Phone

Source: Service Desk

## Enquirer Details

Contact First Name: Katrina

Contact Surname:

Telephone: 07 3021 8822

Email:

Suburb: Brisbane

State:

Employment Status: Other/Unspecified

Duties: Carpentry apprentice

## Organisation Details

ABN: 99004631752

Trading Name: Unknown

Legal Name: HOUSING INDUSTRY ASSOCIATION LIMITED

Previous Name: HOUSING INDUSTRY ASSOCIAT

Business Address: 79 CONSTITUTION AVE, CAMPBELL

Suburb:

Postcode: 2612

Organisation State: ACT

Phone:

Employer Association: No relevant association

Constitutional Corporation: Yes

Industry: Business and Professional Associa

Pre-Post Reform: Pre WC

Industrial Instrument: NAPSA

## Call History

Action Date	Officer	Portal	Security Profile	Action Description
10/07/2012 3:28:02 PM	Cossart, Katherine	Yes	Unspecified	[Knowledge Entry Linked to Call]
10/07/2012 4:19:16 PM	Cossart, Katherine	No	Unspecified	[Call Closed - Resolved Reason : Advice Provided] Advised client that certain employers in Queensland who engaged employees on competency-based training arrangements continue to be covered by • The Order - Apprentices' and Trainees' Wages and Conditions (Excluding Certain Queensland Government Entities) 2003 (Order), and • Their relevant pre-modern award and associated transitional Australian Pay and Classification Scale (Pay Scale). Where this is the case a relevant pre-modern award, Pay Scale and the Order will be preserved and continue to apply to an apprentice and their employer, to the exclusion of a modern award if all the following criteria are met: 1. The employer was covered by an award-based transitional instrument; and 2. The employer engaged at least one apprentice or trainee immediately before 1 January 2010; and 3. The pre-modern award or the relevant Schedule of the Order provides: a. Competency-based wage progression; or b. Time based training arrangements and the Order for the Supply of Tools to Apprentices (Tools Order) applies. Advised client that in such a case, the modern award will not



				apply. Therefore any applicable allowances will come from the Order or the relevant NAPSAs. Provided reference number.
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**Attachments**

No attachments

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**Knowledge Articles**

Type	Reference Number	Title
Technical advice	K220678	Wages and Conditions for Apprentices and Trainees in Queensland

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Freedom of Information Act  
by the Fair Work Ombudsman

s.22 - Irrelevant to request

**From:** FWO - Transition Assist  
**Sent:** Tuesday, 14 August 2012 13:35  
**To:** 'enquiry'  
**Cc:** 'a.cloete@hia.com.au'  
**Subject:** Request for Transitional Advice [SEC=UNCLASSIFIED]  
**Attachments:** Enquiry Response 4999146.pdf

**UNCLASSIFIED**

Good afternoon Ms Cooper,

Please find attached a response to your request about traineeship wage rates for concreters under the *Building and Construction General On-Site Award 2010* [MA000020].

We trust this information is of assistance and apologise for the delay in providing this response.

If you have any further queries or require clarification about the information provided in this letter, please quote the reference number on the attached response and email [transitionassist@fwo.gov.au](mailto:transitionassist@fwo.gov.au). Alternatively you may wish to contact the Transition Assist team directly via our dedicated telephone service on (03) 9954 2931.

Kind regards

Romit Tappoo  
 Knowledge Services  
**Fair Work Ombudsman**

**Fair Work Infoline: 13 13 94**     [www.fairwork.gov.au](http://www.fairwork.gov.au)



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**From:** enquiry [mailto:enquiry@hia.com.au]  
**Sent:** Thursday, 26 July 2012 11:43 AM  
**To:** FWO - Transition Assist  
**Subject:** Qld concreting trainees

Good morning,

Please find query attached.

Thank you

Kind Regards,

Annica Cloete  
 InfoCentre Officer



Housing Industry Association Ltd  
 14 Edmondstone Street  
 South Brisbane Qld 4101  
 p 07 3021 8880  
 f 07 3021 8894  
 e [a.cloete@hia.com.au](mailto:a.cloete@hia.com.au)  
[hia.com.au](http://hia.com.au)

Reference Number: 4999146  
14 August 2012

Ms Laura Cooper  
[enquiry@hia.com.au](mailto:enquiry@hia.com.au)

Dear Ms Cooper,

Thank you for your email of 26 July 2012 about traineeship wage rates under the *Building and Construction General On-Site Award 2010* [MA000020] (the **Building Award**).

Specifically, you have requested information about:

- **Trainee concreter** transitional base rates of pay from the Building Award for employees in Queensland.
- The application of the minimum wage rates under Schedule C of the Building Award.

You have advised that the relevant pre-modern industrial instruments are:

- the *Building Construction Industry Award – State 2003* [AN140043] (the **Building NAPSA**), and
- the *Order – Apprentices and Trainees Wages and Conditions (excluding Certain Queensland Government Entities) 2003* [AN140326] (the **Order**).

We note that the Australian Pay and Classification Scale derived from the *Building Construction Industry Award – State 2003* [AN140043] (the **Pay Scale**) will also be relevant for determining minimum rates of pay.

You have also advised that the employer is a Constitutional Corporation that commenced trading and employing staff prior to 27 March 2006. You have not provided information about whether the employer engaged a trainee immediately prior to 1 January 2010.

We provide the following information in relation to your enquiry. We apologise for the delay in providing this response.

### **Background - Industrial instrument coverage for trainees in Queensland**

In Queensland, if an employer is covered by a pre-modern award satisfying certain criteria, a modern award does **not** apply. The relevant pre-modern industrial instruments continue to apply instead.

The criteria are that:

1. The employer was covered by a pre-modern award, the Order and /or the Order for the Supply of Tools (**Tools Order**); and
2. The employer engaged at least 1 apprentice or trainee immediately before 1 January 2010; and

3. The apprentice or trainee is covered by:

- i. the Order (competency-based training arrangement); or
- ii. the Order (competency-based training arrangement), and Tools Order; or
- iii. the Order (time-based training arrangement), and the Tools Order.

Where the above criteria are met, the pre-modern award, the Order and /or Tools Order will all be preserved.

Furthermore, where the employer meets all of the above criteria, new apprentices and trainees engaged from **1 January 2010** are also covered by the pre-modern award, the Order and the Tools Order to the exclusion of a modern award.

### **Transitional base rates of pay – Trainee concreter**

The transitional base rates of pay for on-site trainees in Queensland completing a Certificate III in Concreting can be calculated two different ways, depending on whether the employer employed at least one trainee immediately prior to 1 January 2010.

#### *The employer engaged a trainee immediately prior to 1 January 2010*

For employers who employed a trainee immediately prior to 1 January 2010, the employer and their trainees will remain covered by the Order, the Building NAPSA and the Pay Scale.

Schedule 4, clause 2.2.1 of the Order provides for competency-based wage progression for General Construction traineeships, including concreting traineeships.

As noted above, where the Order contains a competency-based wage progression, the Order will continue to apply to the employer and any future trainees they employ to the exclusion of any modern award.

Therefore, the minimum wage rates are calculated with reference to the Order, the Building NAPSA and the Pay Scale. Minimum rates of pay in the Pay Scale are subject to the increases handed down by Fair Work Australia (**FWA**) in their Annual Wage Review Decisions for 2010, 2011 and 2012.

The base rate of pay for a trainee concreter in this scenario is calculated using the relevant rate for a tradesperson concreter in the Pay Scale (Construction worker level 3 (CW3)), then:

- Applying the FWA Annual Wage Review Decision increases for 2010, 2011 and 2012, then
- Applying the appropriate trainee percentage to that rate, determined by the proportion of completed competencies of the program.

The percentage applied to the CW3 rate for a trainee is determined by Schedule 4, clause 2.2.1 of the Order.

We provide the following example for your information. The rates of pay calculated below are payable from the first full pay period commencing on or after 1 July 2012.

**Example: Trainee concreter upon commencement**

**Step 1.** Find the rate of pay for a tradesperson from the Pay Scale:

**CW3 - Labourer (1) – Rigger, Dogger, Drainer, Concrete Pump Operator = \$18.05**

**Step 2.** Apply the FWA wage increases for 2010, 2011 and 2012 decisions to the weekly rate:

Weekly rate = \$18.05 x 38 = \$685.90

*Note: The FWA Annual Wage Review increases for each year have been underlined below.*

PPC 1 July 2010: \$685.90 + \$26 = \$711.90

PPC 1 July 2011: \$711.90 x 3.4% = \$736.1046

PPC 1 July 2012: \$736.1046 x 2.9% = \$757.4516

Hourly rate of pay from ppc 1 July 2012 = (\$757.4516 / 38) = **\$19.9329 per hour**

**Step 3.** Apply the relevant trainee percentage from the Order to the increased tradesperson rate:

Prior to the attainment of the minimum training requirements specified for Wage Level 2  
= **68%**

\$19.9329 x 68% = **\$13.5544 per hour.**

As indicated above, in a scenario where the employee employed a trainee immediately prior to 1 January 2010, a modern award does not apply.

*The business did not employ a trainee immediately prior to 1 January 2010*

For employers in Queensland who did not employ a trainee immediately prior to 1 January 2010, a relevant modern award applied to all employees from 1 January 2010.

In this scenario, the trainee concreter rate of pay is calculated with regard to the model transitional provisions at Schedule A to the Building Award. Minimum wage rates for a trainee concreter are phased from the base rates of pay calculated in accordance with the Building NAPSA the Pay Scale and the Order, to the wage rates in clause 28.3 of the Building Award

As requested, we have provided an example below which outlines the transitional arrangements for phasing minimum rates or pay for trainees completing a Certificate III in Concreting.

The relevant pre-modern award rate of pay for the purposes of phasing is calculated by applying the appropriate percentage for the trainee under Schedule 4, clause 2.2.1 of the Order to the CW3 rate for a tradesperson concreter in the Pay Scale.

In relation to the modern award rate for the purposes of phasing, Certificate III in Concreting falls within the Construction, Plumbing and Services Integrated Framework training package, allocated to Wage Level A at Schedule C.1.1 of the Building Award.

The following minimum wage rates are payable from the first full pay period commencing on or after 1 July 2012.

**Example: Trainee upon commencement**

**Step 1.** Find the rate of pay for a tradesperson from the Pay Scale:

**CW3 - Labourer (1) – Rigger, Dogger, Drainer, Concrete Pump Operator = \$18.05**

**Step 2.** Apply the trainee percentage from the Order to this rate.

Prior to the attainment of the minimum training requirements specified for Wage Level 2  
= **68%**

$\$18.05 \times 68\% = \$12.274$  per hour

**Step 3.** Find the rate of pay for 'Other Traineeship', Skill Level A from clause 28.3 the Building Award at 1 January 2010.

Skill Level A = \$452.60 (inclusive of the Industry and Special allowances)

1 January 2010 hourly rate =  $\$452.60 / 38 = \$11.9105$  per hour

**Step 4.** Determine the transitional amount.

Subtract the Building Award rate from the Pay Scale rate:

$= \$12.274 - \$11.9105 = \$0.3635$

Then apply the current percentage (40% to the transitional amount:

$= \$0.3635 \times 40\% = \$0.1454$

**Step 5.** Calculate the rate of pay for a trainee from the Building Award from ppc 1 July 2012.

Skill Level A = \$509.63 (inclusive of the Industry and Special allowances)

1 July 2012 hourly rate =  $\$509.63 / 38 = \$13.4113$  per hour

**Step 6.** Add the transitional amount to the 1 July 2012 rate for a trainee:

$\$13.4113 + \$0.1454 = \$13.5567$  per hour (inclusive of Industry and Special allowances)

**Application of Schedule C rates**

You have also requested clarification on the application of minimum wage rates under Schedule C of the Building Award.

The minimum rates of pay provided in Schedule C are not applicable to trainees covered by the Building Award. This confirms our previous correspondence of 28 November 2011 (Reference 4421836) that base rates of pay in clause 28.1 of the Building Award are intended to replace the base rates of pay in Schedule C.

As per our previous advice, although the rates of pay provided do not apply to trainees covered by the Building Award, Schedule C provides other trainee-specific employment conditions that may be applicable.



If you have any questions about this letter please email us at [transitionassist@fwo.gov.au](mailto:transitionassist@fwo.gov.au) and state the reference number above.

Yours sincerely

Romit Tappoo  
Assistant Director  
Knowledge Services  
**Fair Work Ombudsman**

Cc: Ms Annica Cloete

**Important note: Disclaimer**

FWO is committed to providing useful, reliable information to help you understand your rights and obligations under workplace laws.

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These include:

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- changes in your circumstances; and
- changes in the law.

It is your responsibility to comply with workplace laws that apply to you.

FWO's information is not legal advice and FWO does not accept legal liability arising from or connected to the accuracy, reliability, currency or completeness of this information. Therefore, you may wish to seek independent professional advice to ensure all the factors relevant to your circumstance have been properly considered.

s.22 - Irrelevant to request

**From:** FWO - Practitioner Assist  
**Sent:** Tuesday, 2 October 2012 17:46  
**To:** enquiry  
**Cc:** Cooper, Laura  
**Subject:** RE: Request for Transitional Advice - Transitional Rates phasing from STATE Awards onto Joinery MA [SEC=UNCLASSIFIED]  
**Attachments:** Enquiry Response 5065157.pdf

**UNCLASSIFIED**

Good afternoon Ms Cloete,

Please find attached a response to your enquiry regarding transitional rates of pay under the *Joinery and Building Trades Award 2010* [MA000029].

We trust this information is of assistance and apologise for the delay in providing this response.

If you have further queries or require clarification about the information provided in this letter, please quote the reference number on the attached response and email [practitionerassist@fwo.gov.au](mailto:practitionerassist@fwo.gov.au). Alternatively you may wish to contact the Practitioner Assist team directly via our dedicated telephone service on (03) 9954 2931.

Kind regards

Romit Tappoo  
 Knowledge Services  
**Fair Work Ombudsman**

**Fair Work Infoline: 13 13 94**     [www.fairwork.gov.au](http://www.fairwork.gov.au)



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**From:** enquiry [mailto:enquiry@hia.com.au]  
**Sent:** Wednesday, 29 August 2012 9:44 AM  
**To:** FWO - Practitioner Assist  
**Cc:** Cooper, Laura  
**Subject:** Request for Transitional Advice - Transitional Rates phasing from STATE Awards onto Joinery MA

Good morning,

Please see attached for request for advice.

Thank you.

Kind Regards,

Annica Cloete  
 InfoCentre Officer



Housing Industry Association Ltd  
 14 Edmondstone Street  
 South Brisbane Qld 4101  
 p 07 3021 8880  
 f 07 3021 8894  
 e [a.cloete@hia.com.au](mailto:a.cloete@hia.com.au)  
[hia.com.au](http://hia.com.au)

Reference Number: 5065157  
2 October 2012

Ms Annica Cloete  
[enquiry@hia.com.au](mailto:enquiry@hia.com.au)

Dear Ms Cloete,

Thank you for your email of 29 August 2012 regarding wage rates under the *Joinery and Building Trades Award 2010* [MA000029] (the **Joinery Award**).

Specifically, you have requested information about:

- **Adult, junior and apprentice** transitional base rates of pay from the Joinery Award for employees in NSW.
- **Junior apprentice** base rates of pay for employees in Queensland.

Based on the information provided, the transitional base rates of pay for adult, junior and apprentice classifications in your enquiry for employers in NSW are correct, subject to some minor rounding issues.

The transitional base rates of pay provided in your enquiry for junior apprentice classifications in Queensland are generally correct, with the exception of the first year apprentice classification. We note that the rates of pay provided appear to apply specifically to an employer that did not engage any apprentice or trainee prior to 1 January 2011.

In your enquiry you advised that the relevant pre-modern industrial instruments are:

- the *Joiners (State) Award* [RA120280] (the **NSW Division 2B Award**);
- the *Furniture and Allied Trades Award – State 2006* [RA140128] (the **Qld Division 2B Award**); and
- the *Order – Apprentices and Trainees Wages and Conditions (excluding Certain Queensland Government Entities) 2003* (the **Order**).

For the purposes of this advice we have assumed that the scenarios you have provided relate to **Former Division 2B employers** (i.e. non-Constitutional Corporation employer that were covered by a relevant state award at 31 December 2009).

Further to your telephone conversation with Katherine Cossart from this office on 19 September 2012, you have requested clarification on the correct method for determining minimum rates of pay for apprentices in Queensland where:

- The employer is a Former Division 2B employer that did employ apprentices and/or trainees immediately prior to 1 January 2011; and
- The employer is a Former Division 2B employer that did not employ apprentices and/or trainees immediately prior to 1 January 2011.

We provide the following minimum transitional rates of pay for employees of Former Division 2B employers phasing to the Joinery Award in NSW:

<b>Classification</b>	<b>Phased Rate at 1 July 2012</b>
<b>Adult</b>	
Group 1/ Joinery Level 1	\$16.63
Group 2/ Joinery Level 2	\$17.09
Group 3/ Joinery Level 3	\$17.72
Group 4/ Joinery Level 4	\$18.31
Group 5/ Joinery Level 5	\$19.25
Group 6/ Joinery Level 6	\$19.84
Group 7/ Joinery Level 7	\$20.42
<b>Junior</b>	
16 years/ Joinery Level 1	\$13.25
16 years / Joinery Level 2	\$13.54
16 years / Joinery Level 3	\$13.94
16 years / Joinery Level 4	\$14.30
16 years/ Joinery Level 5	\$14.89
16 years / Joinery Level 6	\$15.26
16 years / Joinery Level 7	\$15.62
<b>Apprentice</b>	
Indentured 1 <sup>st</sup> year/ Joinery 4 year, 1 <sup>st</sup> year	\$8.50
Indentured 2 <sup>nd</sup> year/ Joinery 4 year, 2 <sup>nd</sup> year	\$10.57
Indentured 3 <sup>rd</sup> year/ Joinery 4 year, 3 <sup>d</sup> year	\$13.99
Indentured 4 <sup>th</sup> year/ Joinery 4 year, 4 <sup>th</sup> year	\$16.71

We provide the following base rates of pay for junior apprentices in Queensland, undertaking a cabinetmaking apprenticeship, from the first full pay period commencing 1 July 2012:

		<b>Employer trading prior to 1 January 2010</b>		<b>Employer trading after 1 January 2010</b>
<b>Classification</b>	<b>% of Tradesperson Rate</b>	<b>Employer <u>engaged</u> an apprentice/ trainee immediately prior to 1 January 2011</b>	<b>Employer <u>did not</u> engage any apprentice/trainee immediately prior to 1 January 2011</b>	
<b>Apprentice cabinetmaker</b>				
First Year	40%	\$7.7053	\$8.0256	\$8.3610
Second Year	55%	\$10.5947	\$10.2190	\$10.2190
Third year	75%	\$14.4474	\$13.9350	\$13.9350
Fourth year	90%	\$17.3368	\$16.7220	\$16.7220

We have set out below our detailed reasoning and methodology in calculating the rates provided above. We apologise for the delay in providing this response.

## AWARD COVERAGE FOR FORMER DIVISION 2B EMPLOYERS

There are different rules in relation to award coverage for Former Division 2B employers depending upon the State in which the employees are employed. The following information is intended to provide guidance in determining industrial instrument coverage and applying the model transitional provisions in the scenarios provided in your enquiry.

### *New South Wales*

Division 2B Awards ceased to operate from 31 December 2010. From this date, employers previously bound by a Division 2B Award (i.e. Former Division 2B employers) became covered by a relevant modern award.

However, the model transitional provisions in modern awards extended the operation of a Division 2B Award until the end of the full pay period commencing before 1 February 2011. This means that all the terms of a Division 2B Award continued to operate until the end of the first full pay period commencing before 1 February 2011.

The effect of the model transitional provisions is that Former Division 2B employers phase to a modern award from the terms of a corresponding Notional Agreement Preserving a State Award (**NAPSA**). The relevant NAPSA for the purposes of phasing is the instrument that would have applied to the Former Division 2B employer had they been trading as a Constitutional Corporation prior to 27 March 2006.

### *Queensland – Apprentices and/or trainees*

Whilst the general rules outlined above also apply in Queensland, some employees of Former Division 2B employers under training arrangements in that State may not be covered by a modern award.

Whether an apprentice or trainee in Queensland is covered by a modern award depends on a number of criteria, principally whether the employer engaged any apprentice or trainee immediately **prior to 1 January 2011**.

The table below sets out industrial instrument coverage and the application of the model transitional provisions for non-Constitutional Corporation employers in Queensland:

Non-Constitutional Corporation employers in QLD who <u>did</u> employ any apprentice/trainee immediately prior to 1 January 2011	
Date that business commenced employing employees	Arrangements that apply to apprentice/trainee wages
Before 1 January 2010	A Division 2B Award, the Order and the <i>Order for the Supply of Tools to Apprentices (Tools Order)</i> will continue to apply. A modern award does not apply to the apprentice/trainee.
After 1 January 2010	Full modern award wages apply. Penalties 'phase in' from zero as no pre-modern award is relevant.
Non-Constitutional Corporation employers in QLD who <u>did not</u> employ any apprentice/trainee immediately prior to 1 January 2011	
Date that business commenced employing employees	Transitional arrangements that apply to apprentice/trainee wages
Before 1 January 2010	Wages, casual loadings and penalties phase from the relevant NAPSA unless the Division 2B exception applies (see following page). See <b>Attachment B</b> for additional information.
After 1 January 2010	Full modern award wages apply. Penalties 'phase in' from zero as no pre-modern award is relevant.



## DETERMINING THE APPLICABLE BASE RATE

### *NSW adult, junior and apprentice classifications*

In relation to the scenario you have provided, applicable base rates of pay are calculated in accordance with the model transitional provisions in Schedule A of the Joinery Award. .

It is unclear from your enquiry how you calculated minimum transitional rates of pay for adult, junior and apprentice classifications covered by the Joinery Award in NSW. We provide the following information by way of clarification on the correct methodology for calculating transitional minimum rates of pay for Former Division 2B employers.

As outlined on the previous page, the effect of the model transitional provisions is that Former Division 2B employers phase to a modern award from the terms of a corresponding NAPSA. In the scenario provided, Former Division 2B employers pay the same phased minimum wages as if they were transitioning from the *Joiners (State) Award* [AN120280] (the **NSW NAPSA**), subject to an exception (see below).

### ***The Exception***

The exception to phasing for Former Division 2B employers occurs where the full modern award rate (i.e. the relevant rate in clause 18 of the Joinery Award at 1 February 2011) falls in between the applicable rate in the NSW Division 2B Award and the equivalent rate phased from the NAPSA to the Joinery Award.

Where this occurs the applicable base rate will be the full rate from clause 18 of the Joinery Award including the industry allowance in clause 24.1(b). Where the exception does not apply, the base rate of pay will be the relevant phased rate from the NAPSA.

By way of example, we provide the following calculations for adult classifications based on the classification examples provided in your enquiry to demonstrate how to determine whether the exception applies.

Classification	NSW Division 2B Award rate	Phased NAPSA Rate at 1 Feb 2011	Joinery Award Rate at 1 Feb 2011
<b>Adult</b>			
Group 1/ Joinery Level 1	\$14.35	\$15.60	\$15.64
Group 2/ Joinery Level 2	\$14.81	\$16.03	\$16.08
Group 3/ Joinery Level 3	\$15.42	\$16.63	\$16.67
Group 4/ Joinery Level 4	\$15.99	\$17.18	\$17.22
Group 5/ Joinery Level 5	\$16.92	\$18.07	\$18.11
Group 6/ Joinery Level 6	\$17.49	\$18.62	\$18.66
Group 7/ Joinery Level 7	\$18.06	\$19.16	\$19.21

As shown above, the full rates of pay from the Joinery Award do not fall in between the phased NAPSA rate and the Division 2B Award rate for any classifications. Therefore, the exception does not apply and the phased NAPSA rate of pay (highlighted in green) will apply for each classification.

As provided on page two of this response, the current phased rates of pay from the first full pay period commencing on or after 1 July 2012 can be accessed by using [PayCheck Plus](#) or via the relevant [Pay and Conditions Guide](#).

## Queensland junior apprentices

### Employer that employed apprentices/trainees prior to 1 January 2011

As outlined above, certain employers in Queensland who engaged employees on competency-based training arrangements prior to 1 January 2011 continue to be covered by the Order and a Division 2B Award.

Where this is the case, a relevant Division 2B Award and the Order will be preserved and continue to apply to an apprentice and their employer, to the exclusion of a modern award, if all the following criteria are met:

1. The employer was covered by a Division 2B Award; and
2. The employer engaged at least one apprentice or trainee immediately before 1 January 2011; and
3. The Division 2B Award or the relevant Schedule of the Order provides:
  - a. Competency-based wage progression; or
  - b. Time-based training arrangements and the Tools Order applies.

We note that where an employer satisfies the criteria listed above, the Division 2B Award and the Order will also apply to new apprentices and/or trainees employed by the business after 1 January 2011. **In these circumstances no modern award will apply.**

Wage rates calculated in accordance with a Division 2B Award and the Order are subject to the increases handed down by Fair Work Australia (FWA) in their Annual Wage Review Decisions for 2010, 2011 and 2012

As requested, we provide the following base rates of pay for a junior apprentice, based on the Furnishing Tradesperson Level 1 rate of pay in the Qld Division 2B Award:

Classification	% of Tradesperson's Rate	Full-time base rate of pay from ppc 1 July 2012
<b>Apprentice cabinetmaker</b>		
First Year	40%	\$7.7053
Second Year	55%	\$10.5947
Third year	75%	\$14.4474
Fourth year	90%	\$17.3368

We note that the rates provided in your enquiry appear to have applied the correct apprentice percentages from the Order. However, the tradesperson base rate appears to have been derived from the NAPSA version of the Qld Division 2B Award.

Applying the minimum rates of pay from the NAPSA is not the correct method for determining apprentice rates of pay **for an apprentice that remains covered by a preserved Division 2B Award and the Order**. We have set out the correct method used to determine the rates of pay provided above at **Attachment A** to the letter.

For completeness we note that a non-Constitutional Corporation employer that commenced trading and employing staff after 1 January 2010, and employed an apprentice or trainee prior to 1 January 2011, would be obliged to pay full modern award rates of pay. Modern award penalties and loadings would 'phase in' from zero (refer to wage rates on page two).



### ***Employer that employed apprentices/trainees after 1 January 2011***

Where an employer did not employ an apprentice or trainee immediately prior to 1 January 2011, a Division 2B Award and the Order will not be preserved.

The table below replicates the information provided on page three of this letter and sets out how to calculate wages for non-Constitutional Corporation employers who did not employ any apprentices or trainees immediately prior to 1 January 2011.

<b>Non-Constitutional Corporation employers in QLD who <u>did not</u> employ an apprentice/trainee immediately prior to 1 January 2011</b>	
<b>Date that business commenced employing employees</b>	<b>Transitional arrangements that apply to apprentice/trainee wages</b>
Before 1 January 2010	Wages, casual loadings and penalties phase from the relevant NAPSA unless the Division 2B exception applies (see page four). See <b>Attachment B</b> for further information.
After 1 January 2010	Full modern award wages apply Penalties 'phase in' from zero as no pre-modern award is relevant.

In relation to a business that commenced trading prior to 1 January 2010, but only commenced employing apprentice or trainees after 1 January 2011, we provide the following base rates of pay for a junior apprentice covered by the Joinery Award:

<b>Classification</b>	<b>% of Tradesperson's Rate</b>	<b>Full-time base rate of pay from ppc 1 July 2012</b>
<b>Apprentice cabinetmaker</b>		
First Year	40%	\$8.0256
Second Year	55%	\$10.2190
Third year	75%	\$13.9350
Fourth year	90%	\$16.7220

The information provided in this letter is complex in nature. If you have any questions about this letter please email us at [practitionerassist@fwo.gov.au](mailto:practitionerassist@fwo.gov.au). Alternatively you may wish to speak directly to one of our research officers through the Practitioner Assist telephone service on (03) 9954 2931

Yours sincerely

Romit Tappoo  
Assistant Director, Practitioner Assist  
**Fair Work Ombudsman**

Cc: Laura Cooper

#### **Important note: Disclaimer**

FWO is committed to providing useful, reliable information to help you understand your rights and obligations under workplace laws.

There are a number of factors that might affect the applicability of the information written here

These include:

- whether you have provided us with all the relevant and correct information about your situation;
- changes in your circumstances; and
- changes in the law.

It is your responsibility to comply with workplace laws that apply to you.

FWO's information is not legal advice and FWO does not accept legal liability arising from or connected to the accuracy, reliability, currency or completeness of this information. Therefore, you may wish to seek independent professional advice to ensure all the factors relevant to your circumstances have been properly considered.

## ATTACHMENT A – CALCULATION METHODOLOGY

### Apprentice cabinetmaker in Queensland; Employer engaged at least one apprentice or trainee immediately before 1 January 2011.

The following example relates to a cabinetmaking apprentice employed in Queensland in the following circumstances:

1. The employer was covered by the Qld Division 2B Award; and
2. The employer engaged at least one apprentice or trainee immediately before 1 January 2011; and
3. The relevant Schedule of the Order (Schedule 10) provides:
  - a. Competency-based wage progression.

The base rate of pay for an apprentice in this scenario is calculated using the relevant rate for a Furnishing Tradesperson Level 1, found in the body of the [Qld Division 2B Award](#), then:

- Applying the FWA Annual Wage Review Decision increases for 2010, 2011 and 2012, then
- Applying the appropriate apprentice percentage to that rate from the Order, determined by the proportion of completed competencies.

The percentage applied to the tradesperson's rate for an apprentice is determined by Schedule 10, clause 2.1.1 of the Order which refers to Schedule 1, clause 2 of the Order.

We provide the following example of the calculation method for an apprentice in the scenario described.

#### **Example: Junior cabinetmaker apprentice upon commencement**

**Step 1.** Find the rate of pay for a tradesperson from the Qld Division 2B Award:  
**Furnishing Tradesperson Level 1 = \$662.00**

**Step 2.** Apply the FWA wage increases for 2010, 2011 and 2012 decisions to the weekly rate:

*Note: The FWA Annual Wage Review increases for each year have been underlined below.*

PPC 1 July 2010: \$662.00 + \$26 = \$688.00

PPC 1 July 2011: \$688.00 x 3.4% = \$711.40, rounded to the nearest 10 cents.

PPC 1 July 2012: \$711.392 x 2.9% = \$732.00, rounded to the nearest 10 cents.

Hourly rate of pay for a Furnishing Tradesperson Level 1 from ppc 1 July 2012  
 = (\$732.00 / 38) = **\$19.2632 per hour**

**Step 3.** Apply the relevant apprentice percentage from the Order to the increased tradesperson rate:

Prior to the attainment of the minimum training requirements specified for Wage Level 2  
 = **40%**

\$19.2632 x 40% = **\$7.7053 per hour** from ppc 1 July 2012.

## ATTACHMENT B – CALCULATION METHODOLOGY

### Apprentice cabinetmaker in Queensland; Employer did not engage any apprentice or trainee immediately before 1 January 2011.

As noted in your enquiry, PayCheck Plus does not currently calculate transitional minimum rates of pay for apprentices in Queensland under the Joinery Award. Additionally, PayCheck Plus does not have the functionality to determine whether the exception to phasing for Former Division 2B employers applies.

The information below outlines the method used to calculate the transitional rate of pay for the purposes of determining whether the exception to phasing for Former Division 2B employers applies. That is, the example only applies for calculating the minimum *phased* rate of pay applicable from the **first full pay period commencing on or after 1 February 2011**.

The example relates to a cabinetmaking apprentice employed in Queensland in the following circumstances:

- The employer is a Former Division 2B employer established prior to 1 January 2010; and
- The employer did not engage any apprentice and/or trainee immediately prior to 1 January 2011.

#### *Transitional calculations*

Schedule A.8 of the Joinery Award contains transitional provisions for former Division 2B employers. This clause provides that these employers pay the same wages as national system employers would have been required to pay from the first full pay period on or after 1 February 2011, subject to an exception (see page four of this response).

To determine the transitional minimum rate of pay for an apprentice employed by a Former Division 2B employer that did not employ any apprentice and/or trainee prior to 1 January 2011, the following steps are relevant:

1. Determine which NAPSA *would have* applied to the employee if the employer had not been a Former Division 2B employer (i.e. in this case the NAPSA derived from the *Furniture and Allied Trades Award – State 2006* [AN140128]).
2. Calculate the minimum 'pre-modern award' rate of pay for the apprentice cabinetmaker by applying the appropriate apprentice percentage provided at Schedule 10, clause 2.1.1 of the Order to the rate of pay for a Furnishing Tradesperson Level 1 in the Pay Scale derived from the NAPSA.
3. Phase the resulting rate of pay to the rate of pay in the Joinery Award, calculated in accordance with clause 19.
4. Determine whether the Division 2B exception applies.

As stated above, whether the Division 2B exception applies will need to be determined on a case-by-case basis. For more information on the exception, please refer to page four.

If the exception does not apply, minimum rates of pay will phase as per Schedule A of the Joinery Award.

s.22 - Irrelevant to request

**From:** FWO - Practitioner Assist  
**Sent:** Tuesday, 4 December 2012 15:23  
**To:** Cooper, Laura  
**Subject:** RE: Enquiry Plumbing apprentices qld [SEC=UNCLASSIFIED]  
**Attachments:** Enquiry Response 5190352.pdf

**UNCLASSIFIED**

Good Afternoon Ms Cooper,

Please find attached a response to your enquiry about the continued operation of the *Order - Apprentices' and Trainees' Wages and Conditions (Excluding Certain Queensland Government Entities) 2003* (the **Order**) in Queensland after 1 January 2010.

We trust this information is of assistance and apologise for the delay in providing this response.

If you have any further queries or require clarification about the information provided in this letter, please quote the reference number on the attached response and email [practitionerassist@fwo.gov.au](mailto:practitionerassist@fwo.gov.au).

Kind regards

Romit Tappoo  
 Knowledge Services  
**Fair Work Ombudsman**

**Fair Work Info Line: 13 13 94**

[www.fairwork.gov.au](http://www.fairwork.gov.au)

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**From:** Cooper, Laura [mailto:l.cooper@hia.com.au]  
**Sent:** Thursday, 8 November 2012 9:58 AM  
**To:** FWO - Practitioner Assist  
**Subject:** Enquiry Plumbing apprentices qld

Hi

Please find attached query relating to plumbing apprentices rates in QLD.

Many thanks

Laura Cooper  
 Workplace Services Manager - QLD



Housing Industry Association Ltd  
 14 Edmondstone Street  
 South Brisbane 4101  
 p 07 3021 8800  
 f 07 3021 8894  
[hia.com.au](http://hia.com.au)

Reference Number: 5190352  
4 December 2012

Laura Cooper  
[l.cooper@hia.com.au](mailto:l.cooper@hia.com.au)

Dear Ms Cooper,

Thank you for your email of 8 November 2012 about the continued operation of the *Order - Apprentices' and Trainees' Wages and Conditions (Excluding Certain Queensland Government Entities) 2003* (the **Order**) in Queensland after 1 January 2010.

Further to your telephone conversation with Kathleen Hill from this office on 26 November 2012, you have advised that the employer in question is a Constitutional Corporation that commenced trading and employing staff prior to 27 March 2006. Additionally, the employer employed an apprentice immediately prior to 1 January 2010.

Based on the information provided, we confirm that the following industrial instruments continue to cover apprentices employed by the employer in question:

- the NAPSA derived from the *Order – Apprentices and Trainees Wages and Conditions (excluding Certain Queensland Government Entities) 2003* [AN140236] (the **Order**),
- the *Order – Supply of Tools to Apprentices* (**Tools Order**),
- the NAPSA derived from the *Building Construction Industry Award - State 2003* [AN140043] (the **Building NAPSA**), and
- the transitional Australian Pay and Classification Scale (**Pay Scale**) derived from the Building NAPSA

Where the Building NAPSA and the Order continue to apply to an apprentice, this is to the **exclusion** of a modern award. The modern award rate of pay for the apprentice in question is therefore irrelevant as the modern award does not apply to the employer described.

We provide the following information in relation to your enquiry. We apologise for the delay in providing this response.

### **Competency-based training arrangements in Queensland**

Some employees under training arrangements in Queensland may **not** be covered by a modern award. As you have indicated in your enquiry, transitional legislation and regulations prescribed certain award-based transitional instruments (pre-modern awards, for example NAPSAs) and Division 2B State awards to continue to apply, to the exclusion of a modern award, for employees engaged under competency-based training arrangements.



For an employer and their employees to continue to be covered by a pre-modern award, the following criteria must be satisfied:

1. The employer was covered by a pre-modern award, the Order and /or the Tools Order at 27 March 2006; and
2. The employer engaged at least 1 apprentice or trainee immediately before 1 January 2010; and
3. The apprentice or trainee is covered by:
  - i. the Order (competency-based training arrangement); or
  - ii. the Order (competency-based training arrangement), and Tools Order; or
  - iii. the Order (time-based training arrangement), and the Tools Order.

Where the above criteria are met, the pre-modern award, the Order and /or Tools Order will all be preserved.

Furthermore, where the employer meets all of the above criteria, new apprentices and trainees engaged from 1 January 2010 are also covered by the pre-modern award, and/or the Order and the Tools Order to the exclusion of a modern award.

Based on the information you have provided, the abovementioned industrial instruments continue to apply to the employer and apprentice in question because:

1. The employer described was a constitutional corporation and engaged apprentices prior to 27 March 2006 and was therefore covered by the Building NAPSA at 27 March 2006.
2. The employer employed apprentices immediately prior to 1 January 2010.
3. Schedules 1 and 4 of the Order provide for competency-based training arrangements.
4. Plumbing apprentices are included in the Tools Order.

Therefore, minimum rates of pay, penalty entitlements and allowances will continue to be calculated in accordance with the Building NAPSA, together with the Pay Scale, to the exclusion of a modern award. Additionally, the Tools Order continues to apply.

We note that the Building NAPSA is only preserved for apprentices and trainees. Other employees would be covered by the appropriate modern award.

As the modern award does not apply, it is not relevant that the applicable apprentice rate of pay derived from the modern award is different to the rate calculated in accordance with the Order, the Building NAPSA and the Pay Scale.

In our view, employers are obliged to meet the minimum conditions and rates of pay from the industrial instruments that cover their employees.

We note that in your enquiry it is unclear how you have applied the preserved Industry allowance to the rate of pay for a third year apprentice covered by the pre-modern award.

If you require assistance in calculating minimum rates of pay for apprentices that remain covered by a pre-modern award, Pay Scale and the Order, please contact us.

If you have any questions about this letter please email us at [practitionerassist@fwo.gov.au](mailto:practitionerassist@fwo.gov.au) and state the reference number above.

Yours sincerely

Romit Tappoo  
Assistant Director, Practitioner Assist  
**Fair Work Ombudsman**

**Important note: Disclaimer**

FWO is committed to providing useful, reliable information to help you understand your rights and obligations under workplace laws.

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- whether you have provided us with all the relevant and correct information about your situation;
- changes in your circumstances; and
- changes in the law.

It is your responsibility to comply with workplace laws that apply to you .

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s.22 - Irrelevant to request

**From:** FWO - Practitioner Assist  
**Sent:** Wednesday, 5 December 2012 16:31  
**To:** Cooper, Laura  
**Cc:** infocentre@hia.com.au  
**Subject:** RE: Enquiry Form - Practitioner Assist QLD Apprentices [SEC=UNCLASSIFIED]  
**Attachments:** Enquiry Response 5189353.pdf

**UNCLASSIFIED**

Good afternoon Mr Hill,

Please find **attached** a response to your enquiry regarding industrial instrument for coverage for apprentices in Queensland.

We trust this information is of assistance and apologise for the delay in providing this response.

If you have any further queries or require clarification about the information provided in this letter, please quote the reference number on the attached response and email [practitionerassist@fwo.gov.au](mailto:practitionerassist@fwo.gov.au).

Kind regards

Romit Tappoo, *Practitioner Assist*  
**Fair Work Ombudsman**

**Fair Work Info Line: 13 13 94**      [www.fairwork.gov.au](http://www.fairwork.gov.au)

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**From:** Cooper, Laura [mailto:l.cooper@hia.com.au]  
**Sent:** Wednesday, 7 November 2012 1:26 PM  
**To:** FWO - Practitioner Assist  
**Subject:** Enquiry Form - Practitioner Assist QLD Apprentices

Good afternoon

Please find attached enquiry form relating to QLD Apprentices.

Many thanks

Laura Cooper  
Workplace Services Manager - QLD



Housing Industry Association Ltd  
14 Edmondstone Street  
South Brisbane 4101  
p 07 3021 8800  
f 07 3021 8894  
[hia.com.au](http://hia.com.au)

Reference Number: 5189353  
5 December 2012

Mr Patrick Hill  
[infocentre@hia.com.au](mailto:infocentre@hia.com.au)

Dear Mr Hill,

Thank you for your email enquiry of 7 November 2012 regarding award coverage and transitional arrangements for apprentices in Queensland.

Specifically, you have requested advice on the following:

1. When an apprentice in Queensland is bound by the *Order – Apprentices and Trainees' Wages and Conditions (Excluding Certain Queensland Government Entities) 2003* [AN140326] (**Order**), is the base rate of pay derived from the NAPSA or the Division 2B Award?

Is there a difference for employers trading as:

- Constitutional Corporations
- Non-Constitutional Corporations?

2. In what situation does a modern award apply to apprentices in Queensland?
3. Where an apprentice in Queensland is currently covered by a pre-modern award, will a relevant modern award apply after modern award transitional arrangements cease at 1 July 2014?

We have set out our response to each of your questions below. We apologise for the delay in providing this response

#### Question 1

The base rate of pay for an apprentice in Queensland bound by the Order is derived from the relevant Notional Agreement Preserving State Award (**NAPSA**) and the corresponding Australian Pay and Classification Scale (**Pay Scale**). This base rate of pay is not affected by whether the employer is a Constitutional Corporation or not.

This is due to Fair Work Australia's (**FWA**) Annual Wage Review Decision 2011 (see [\[2011\] FWAFB 3400](#)). Paragraph [350] of this decision provides that minimum rates of pay in Division 2B awards that apply to employees engaged on competency-based training arrangements in Queensland should reflect minimum rates of pay in transitional Pay Scales (i.e. the rates of pay derived from a NAPSA).

We note that this is contrary to the advice provided to your office on 2 October 2012 (Reference number 5065157). The information provided on page five of this response (and Attachment A) regarding the calculation of Division 2B wages for apprentices in Queensland

bound to the Order is not correct. In view of this oversight we have set out amended advice at **Attachment A** to this letter.

## Question 2

Modern award rates apply in full to an apprentice in Queensland employed by Non-Constitutional Corporation (i.e. Division 2B employers) who commenced trading and employing staff after 1 January 2010.

Further, a modern award rate may apply in full to an apprentice in Queensland employed by a Non-Constitutional Corporation employer who:

- commenced trading prior to 1 January 2010, but
- did not employ an apprentice immediately before 1 January 2011.

The modern award rate is payable in this scenario when the Division 2B exception applies. **Attachment B** outlines the specific modern award transitional provisions stipulating when modern award rates apply in full.

In your enquiry you have referred to a previous response (Reference number 5065157). The advice provided in this letter about the operation of the Division 2B exception is correct.

For your information we have created a table summarising industrial instrument coverage for apprentices employed in Queensland contained at **Attachment C**.

## Question 3

The continued coverage of pre modern awards to the exclusion of modern awards under Regulation 3B.02 and 3A.01 of the *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009* (Cth) will apply until the Regulations are repealed.

Further information about the operation of Regulation 3B.02 is provided in **Attachment D**.

If you have any questions about this letter please email us at [practitionerassist@fwo.gov.au](mailto:practitionerassist@fwo.gov.au) and state the reference number above

Yours sincerely

Romit Tappoo  
Assistant Director, *Practitioner Assist*  
**Fair Work Ombudsman**

### Important note: Disclaimer

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It is your responsibility to comply with workplace laws that apply to you.

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## Attachment A: Minimum wage calculation methodology for apprentices in Queensland bound by the Order

We are of the view that the base rate of pay for an apprentice in Queensland bound by the Order is derived from the relevant NAPSA.

As discussed in our previous response provided to your office (Reference number 472773) certain employers who engaged employees on competency -based training arrangements continue to be covered by the Order and their pre-modern award.

The NAPSA-derived rate of pay will apply to apprentices in Queensland employed by:

- Constitutional Corporations that, prior to 27 March 2006 and 1 January 2010, were covered by the Order and/or the *Order - Supply of Tools to Apprentices (Tools Order)*; and
- Non-Constitutional Corporations (i.e. sole traders and partnerships) who, prior to 1 January 2010, were covered by a Division 2B State award and the Order and/or the Tools Order.

For employees of Constitutional Corporations, the pre-modern award that would have applied prior to 1 January 2010 is a NAPSA and the corresponding Pay Scale.

For employees of Non-Constitutional Corporations, the pre-modern award that would have applied prior to 1 January 2010 is a Division 2B State award.

In the 2011 Annual Wage Review Decision, FWA noted in relation to these two distinct employer groups at paragraphs [348] and [350] that:

[348] ... It follows that there is now a gap between the wages in the transitional [Pay Scales] and those in the Division 2B State awards and the gap will increase if we do not adjust wages in the Division 2B State awards as a consequence of this decision. ...

[350] We think it is desirable to eliminate the differences between the two groups. There should be consistent safety net conditions for employers and employees in similar circumstances.

Based on the submissions we estimate that few employers will be affected and the effect on employment is unlikely to be significant. It was not suggested that we do not have power to vary the relevant awards.

We consider that the most effective way to deal with the issue is to vary the minimum wages in the relevant Division 2B State awards to reflect the minimum wages in the related transitional APCs and we do so.

[Emphasis added]

Accordingly, wages in Division 2B State awards for certain apprentices in Queensland are taken to be varied to achieve parity with minimum wages in the corresponding transitional Pay Scales. That is, the Division 2B rates of pay are taken to be equal to the Pay Scale rates of pay derived from the NAPSA, with the addition of the 2010, 2011 and 2012 FWA Annual Wage Review increases.

*Constitutional Corporation employers – covered by the Order*

Each of the Schedules of the Order specifies relevant percentages for determining wages for apprentices and trainees. These percentages are applied to the relevant trade / classification rate in the Pay Scale to determine a base rate of pay.

In order to determine the current base rate of pay for an apprentice in Queensland that is covered by the Order and a Pay Scale:

1. Determine the applicable weekly transitional Pay Scale rate of pay that applied to the relevant tradesperson classification;
2. Apply the \$26.00 per week 2010 FWA Annual Wage Review increase;
3. Apply the 3.4% 2011 Annual Wage Review increase;
4. Apply the 2.9% 2012 Annual Wage Review increase;
5. Determine the applicable apprentice / trainee percentage from the Order,
6. Apply the applicable apprentice / trainee percentage from the Order to the weekly tradesperson's rate, as increased in the steps above, to determine the current base rate of pay for the apprentice.

We have illustrated the steps above in the following example

**Example: Junior carpentry apprentice (on commencement)**

The apprentice in the scenario is engaged under the *Building and Construction Industry Award - State 2003* [AN140043] (the **NAPSA**)

**Step 1** - Determine the applicable classification and weekly rate of pay for the relevant tradesperson classification specified in the Pay Scale derived from the NAPSA:

Construction Worker Level 3 (CW3) Carpenter: Hourly rate: \$18.69 / Weekly rate: \$710.22

**Step 2** - Apply the 2010, 2011 and 2012 FWA Annual Wage Review increases to the rate determined above:

$$\$710.22 + \$26.00 = \$736.22$$

$$\$736.22 + 3.4\% = \$761.2515$$

$$\$761.2515 + 2.9\% = \$783.3278$$

**Step 3** - Apply the relevant apprentice / trainee percentage in the Order to the weekly rate above:

Schedule 4 clause 2.1.1 of the Order provides that the relevant building and construction industry apprentice provisions are contained in clause 2 of Schedule 1 of the Order. Schedule 1 clause 2 provides that an apprentice upon commencement receives 40% of the tradespersons rate.

$$40\% \times \$783.3278 = \$313.33$$

$$\$313.33 / 38 = \$8.2456$$

Accordingly, from ppc 1 July 2012, the base rate of pay for the apprentice in this scenario is **\$8.2456 per hour**.



*Non-Constitutional Corporation employers – covered by the Order*

As discussed above, wages in Division 2B State awards for certain apprentices in Queensland are taken to be equal to Pay Scale rates of pay derived from a relevant NAPSA, with the addition of the 2010, 2011 and 2012 FWA Annual Wage Review increases.

In order to determine the current base rate of pay for an apprentice in this scenario:

1. Determine the applicable tradesperson classification and rate of pay specified in the relevant Division 2B State award;
2. Determine the applicable tradesperson classification in the corresponding Pay Scale derived from the NAPSA and the weekly minimum wage;  
Note: The corresponding Pay Scale is the one that would have covered the employer had they been a Constitutional Corporation.
3. Apply the 2010, 2011 and 2012 FWA Annual Wage Review increases;
4. Apply the relevant apprentice / trainee percentage from the Order to the relevant weekly tradesperson rate of pay calculated above.

We have illustrated the steps above in the following example:

**Example: Junior carpentry apprentice (on commencement)**

The apprentice in this scenario is engaged under the *Building and Construction Industry Award - State 2003* [RA140043] (the **Div 2B Award**)

**Step 1** - Determine the relevant tradesperson classification and weekly rate of pay specified in the Div 2B Award:

Construction Worker Level 3 (CW3) Carpenter: Weekly rate: \$662.10

**Step 2** - Determine the corresponding tradesperson classification and weekly rate of pay in the Pay Scale derived from the NAPSA:

i.e. Pay Scale derived from the *Building and Construction Industry Award - State 2003* [AN140043]

Construction Worker Level 3 (CW3) Carpenter : Weekly rate:  $\$18.69 \times 38 = \underline{\$710.22}$

**Step 3** - Apply the 2010, 2011 and 2012 FWA Annual Wage Review increases to the weekly rate determined above:

$\$710.22 + \$26.00 = \$736.22$

$\$736.22 + 3.4\% = \$761.2515$

$\$761.2515 + 2.9\% = \$783.3278$

**Step 3** - Apply the relevant apprentice / trainee percentage in the Order to the weekly rate above:

Schedule 4 clause 2.1.1 of the Order provides that the relevant building and construction industry apprentice provisions are contained in clause 2 of Schedule 1 of the Order. Schedule 1 clause 2 provides that an apprentice upon commencement receives 40% of the tradespersons rate.

$40\% \times \$783.3278 = \$313.33$

$\$313.33 / 38 = \$8.2456$

For an apprentice in this scenario (i.e. one covered by a Division 2B State award in Queensland), their base rate of pay is taken to be equal the corresponding rate of pay in the Pay Scale derived from a NAPSA.

Accordingly, from ppc 1 July 2012, the base rate of pay for the apprentice in this scenario is **\$8.2456 per hour**.

The calculation method provided above amends the advice provided in our response provided to your office on 2 October 2012 (Reference 5065157).

That is, our previous advice indicated that the relevant base rate is derived from the Division 2B Award not the Pay Scale derived from the NAPSA. This is not the case, as outlined in FWA's 2011 Annual Wage Review Decision (see page one of this response).

We note that while minimum rates of pay from the first full pay period commencing on or after 1 July 2011 are now derived from the NAPSA, **conditions of employment (including penalties and loadings) are still derived from the Division 2B State award for apprentices employed by Non-Constitutional Corporations that are bound by the Order in Queensland.**

For completeness we note that the Order applying to Constitutional Corporations is different to the version of the Order applying to Division 2B State award employers

See the [Constitutional Corporation Order](#) to access the Order which applies to Constitutional Corporation as at 27 March 2006. See the [Non-Constitutional Corporation Order](#) to access the Order which applies to Non-Constitutional Corporations.

Note: The percentages applied to calculate minimum rates of pay for apprentices and trainees in the building and construction training package do not differ between the Constitutional Corporation and Non-Constitutional Corporation versions of the Order.



## Attachment B: When modern award rates of pay apply in full

As noted on page two, there are two common scenarios where an apprentice in Queensland covered by a modern award receives the modern award rates of pay in full.

An apprentice in Queensland may be entitled to full rates of pay from a modern award when the employer is a Non-Constitutional Corporation that:

- Commenced trading/employing staff after 1 January 2010 in a Division 2B referring state (i.e. Queensland).
- Commenced trading/employing staff before 1 January 2010 **but** did not employ an apprentice immediately prior to 1 January 2011.

<i>Non-Constitutional Corporation that commenced trading/employing staff after 1 January 2010</i>
---

If a Non-Constitutional Corporation employer did not operate or employ employees doing the kind of work regulated by a Division 2B State award prior to 1 January 2010, they are not covered by a Division 2B State award.

Item 4(4) of the Transitional Act states that:

(4) If:

(a) after the Division 2B referral commencement, a person (the **employer**) starts to employ employees to do work of a kind that was regulated by the source award immediately before that commencement; and

(b) the employer did not employ employees to do that kind of work immediately before that commencement;

then the Division 2B State award also does not **cover** any of the following, in relation to that kind of work:

(c) the employer;

(d) employees of the employer;

(e) any other persons, in relation to the employer or employees of the employer.

[Emphasis added]

As a result, if there is a modern award capable of covering the employer and employees, then it will generally apply.

### Wages

Your enquiry relates to the *Building and Construction General On-Site Award* [MA000020] (the **Building Award**).

Clause A.1.2 of Schedule A to the Building Award states that transitional provisions apply to wages when:

**(a)** when there is a difference, in money or percentage terms, between a provision in a relevant transitional minimum wage instrument (including the transitional default casual loading) or award - based transitional instrument on the one hand and an equivalent provision in this award on the other;

[Emphases added]

A 'transitional minimum wage instrument' is defined in the Transitional Act to include a transitional Pay Scale, the Federal Minimum Wage or a special Federal Minimum Wage.

Immediately prior to 1 January 2010, such an employer would not have been obliged to pay minimum wages pursuant to a transitional minimum wage instrument or an award-based transitional instrument (i.e. Division 2B state award or NAPSA).

Therefore, there is no relevant instrument setting out existing minimum wages which can be compared to the wages in the modern award. Accordingly, phasing will generally not apply, and employees will be entitled to full modern award wage rates.

### *Penalties and loadings*

As discussed above, although modern award wages apply in full for employees of Non-Constitutional Corporations in referring states that were established or began employing staff after 1 January 2010, modern award penalties and loadings will still be subject to modern award transitional provisions.

Clause A.7 of Schedule A to the Building Award applies where there were no existing penalties or loadings. Modern award penalties and loadings will 'phase in' from zero in accordance with clause A.7.

The 'phasing in' percentages are as follows:

First full pay period on or after	% of the loading/ penalty
1 July 2010	20%
1 July 2011	40%
1 July 2012	60%
1 July 2013	80%

The Building Award includes the model transitional provisions at Schedule A to the award.

*Non-Constitutional Corporation commenced trading/employing staff before 1 January 2010 but did not employ an apprentice immediately prior to 1 January 2011*

If a Non-Constitutional Corporation in a referring state operated or employed employees prior to 1 January 2010 and **did not** employ an apprentice immediately prior to 1 January 2011 they are covered by a relevant modern award.

The rates of pay, penalties and loadings for these employers will be the same phased wages as though they were transitioning from the corresponding NAPSA, subject to an exception.

The exception to phasing for Non-Constitutional Corporation employers in a referring state occurs where the full modern award rate, penalty rate or loading falls in between the applicable rate, penalty rate or loading in the Division 2B Award and the equivalent rate, as phased, from the NAPSA.

The provisions relating to the Division 2B exception are contained within the transitional provisions of the relevant modern award.

Your enquiry relates to the Building Award which includes the model transitional provisions at Schedule A to the award.

Clauses A.8.4 and A.8.5 of the Building Award state that:

**A.8.4** Despite clause A.8.3, where a minimum wage, loading or penalty rate in a Division 2B State award immediately prior to 1 February 2011 was lower than the corresponding minimum wage, loading or penalty rate in this award, nothing in this Schedule requires a Division 2B employer to pay more than the minimum wage, loading or penalty rate in this award.

**A.8.5** Despite clause A.8.3, where a minimum wage, loading or penalty rate in a Division 2B State award immediately prior to 1 February 2011 was higher than the corresponding minimum wage, loading or penalty rate in this award, nothing in this Schedule requires a Division 2B employer to pay less than the minimum wage, loading or penalty rate in this award.

Clause A.8.4 provides that where the **rate of pay, penalty rate or loading** in a Division 2B State award is lower than the modern award equivalent, but the phased rate is higher than the modern award equivalent, the full modern award rate will apply.

Clause A.8.5 provides that where the **rate of pay, penalty rate or loading** in a Division 2B State award is higher than the modern award equivalent, but the phased rate is lower than the modern award equivalent, the full modern award rate will apply.

**The application of the full modern award rate (i.e. base rate, penalty rate or loading) to a Division 2B State award employee is referred to as ‘the exception’.**

We are of view that the exception to the Division 2B transitional arrangements is only applied once at the commencement of the Division 2B transitional provisions on the first full pay period on or after 1 February 2011.

To calculate a Division 2B employee's applicable base rate, penalty rate or loading:

- Where the exception did apply, the Division 2B employee will receive the current full modern award rate penalty rate or loading.
- Where the exception did not apply, the Division 2B employee will receive the current applicable NAPSA phased rate, penalty rate or loading, as calculated using Pay Check Plus.

## Attachment C: Industrial Instrument coverage for apprentices in Queensland

Non-Constitutional Corporation employers	
Employed an apprentice/trainee immediately prior to 1 January 2011	
Date that business commenced employing employees	Transitional arrangements
Before 1 January 2010 (i.e. still bound to the Order)	<ul style="list-style-type: none"> <li>A modern award does not apply to the apprentice/trainee.</li> <li>A Division 2B Award, the Order and the Tools Order will continue to apply.</li> <li>Wages will be the same as those derived from the relevant Pay Scale (as increased by FWA Annual Wage Review decisions).</li> <li>Penalties and loadings are derived from the Division 2B Award.</li> </ul>
After 1 January 2010 (i.e. never bound to the Order)	<ul style="list-style-type: none"> <li>A modern award applies. See <b>Attachment B</b> for further information.</li> <li>Full modern award wages apply.</li> <li>Penalties and loadings 'phase in' from zero as there is no pre modern award for phasing purposes</li> </ul>
Did not employ an apprentice/trainee immediately prior to 1 January 2011	
Date that business commenced employing employees	Transitional arrangements
Before 1 January 2010 (i.e. not bound to the Order)	<ul style="list-style-type: none"> <li>A modern award applies.</li> <li>Wages, penalties and loadings are will be phased to the relevant modern award, subject to transitional provisions including the Division 2B exception.</li> </ul>
After 1 January 2010 (i.e. never bound to the Order)	<ul style="list-style-type: none"> <li>A modern award applies. See <b>Attachment B</b> for further information.</li> <li>Full modern award wages apply.</li> <li>Penalties 'phase in' from zero as no pre-modern award is relevant.</li> </ul>
Constitutional Corporation employers	
Employed an apprentice/trainee immediately prior to 1 January 2010	
Date that business commenced employing employees	Transitional arrangements
Before 27 March 2006 Employed an apprentice/trainee immediately prior to 27 March 2006 (i.e. still bound to the Order)	<ul style="list-style-type: none"> <li>A modern award does not apply to the apprentice/trainee.</li> <li>A NAPSA, the Order and the Tools Order will continue to apply.</li> <li>Wages will be increased by FWA Annual Wage Review decisions.</li> </ul>
After 27 March 2006 (i.e. not bound to the Order)	<ul style="list-style-type: none"> <li>A modern award applies.</li> <li>Wage rates will be phased from the Order and relevant Pay Scale.</li> <li>Loadings and penalties will be 'phased in' from zero.</li> </ul>
Did not employ an apprentice/trainee immediately prior to 1 January 2010	
Date that business commenced employing employees	Transitional arrangements
Before 27 March 2006 (i.e. not bound to the Order)	<ul style="list-style-type: none"> <li>A modern award applies. See <b>Attachment B</b> for further information.</li> <li>Wages phase from the relevant Pay Scale and loadings and penalties phase from a relevant Federal award/NAPSA or 'phase in' from zero where there was no Federal award/NAPSA coverage.</li> </ul>
After 27 March 2006 (i.e. not bound to the Order)	<ul style="list-style-type: none"> <li>A modern award applies.</li> <li>Wage rates will be phased from the relevant Pay Scale.</li> <li>Loadings and penalties will be 'phased in' from zero.</li> </ul>

## **Attachment D: Continued coverage under a pre-modern award**

Regulations 3B.02 and 3A.01 of the Transitional Regulations provides the method by which the Order and a NAPSA may be preserved and continue to apply to the exclusion of a modern award, for employees engaged under competency based training arrangements.

As discussed in our response provided on 16 March 2012 (Reference number 4727773) Regulation 3B.02 relates to Constitutional Corporations and Regulation 3A.01 relates to Non-Constitutional Corporations (i.e. Division 2B State award employers).

These regulations modify the transitional schedules contained in the Transitional Act in accordance with subitem (8)(1) of Schedule 2 of the Transitional Act.

As a result, these Regulations replace the transitional schedules that would have applied for these employers and their employees (e.g. the model transitional provisions)

The regulations do not provide an expiry date for the continued operation of pre-modern awards for employees engaged under competency based training arrangements. We note that this differs to the model transitional provisions usually contained in Schedule A to the modern awards that cease to operate from the beginning of the first full pay period on or after 1 July 2014.

Therefore, wages and conditions of employment will continue to come from the Order and a NAPSA for apprentices in Queensland (when applicable) until the Regulations are amended or repealed.

For your information we have provided the relevant provisions of the Regulations below:

Regulation 3B.02:

### **3B.02 References to award-based transitional instruments and continued coverage under award-based transitional instruments**

For subitem 8 (1) of Schedule 2 to the Act, Schedule 5 to the Act is modified by inserting the following item and Parts after item 14 of Part 4.

### **15 References to award-based transitional instrument in term of modern award**

To avoid doubt, a reference to an award-based transitional instrument in a term of a modern award dealing with the transition from an award-based transitional instrument to the modern award includes a reference to a transitional award within the meaning of Schedule 6 to the Workplace Relations Act 1996.

### **Part 5 Continued coverage under award-based transitional instruments**

#### **16 Continued coverage**

(1) Despite item 29 of Schedule 3, an award-based transitional instrument that:

- (a) sets minimum terms and conditions for an employee to whom a training arrangement applies; and
- (b) either:
  - (i) provides for competency-based wage progression; or
  - (ii) provides solely for the provision of tools for use by apprentices; and
- (c) covered an employee or employer immediately before 1 January 2010; continues to cover the employee or employer.

- (2) Despite the rule in item 11 of Schedule 9, an employee who is covered by the award-based transitional instrument is also covered by a transitional APCS that would have covered the employee immediately before 1 January 2010.
- (3) The award-based transitional instrument and transitional APCS also cover an employee to whom a training arrangement applies:
- (a) who is employed, on or after 1 January 2010, by an employer who is covered by the award-based transitional instrument; and
  - (b) who would have been covered by the award-based transitional instrument and transitional APCS under subitems (1) and (2) if the employee had been employed immediately before 1 January 2010.
- (4) For subitems (1) to (3), the award-based transitional instrument and transitional APCS only cover an employer in respect of an employee to whom a training arrangement applies.
- (5) Despite section 47 of the FW Act, a modern award that would, but for this subitem, apply to the employee does not apply for the period during which the award-based transitional instrument covers the employee.

#### Regulation 3A.01:

##### **3A.01 Continued coverage under Division 2B State award**

For subitem 8 (1) of Schedule 2 to the Act Schedule 3A to the Act is modified by inserting the following Part after Part 4.

#### **Part 4A Continued application of certain transitional instruments**

##### **36A Division 2B State awards**

(1) Despite subitem 21(1) of Schedule 3A, a Division 2B State award that is affected, in the same way as a source State award is affected immediately before the Division 2B referral commencement, by an order, decision or determination of a State industrial body that:

- (a) sets minimum terms and conditions for an employee to whom a training arrangement applies; and
- (b) either:
  - (i) provides for competency based wage progression; or
  - (ii) provides solely for the provision of tools for use by apprentices;

does not terminate at the end of 12 months after the Division 2B referral commencement.

(2) The Division 2B State award continues to operate only to the extent that it covers:




- (a) an employee to whom a training arrangement applies; and
- (b) an employer in respect of an employee to whom a training arrangement applies; and
- (c) an employee, to whom a training arrangement applies, who is:
  - (i) an employee of an employer described in paragraph (b); and
  - (ii) employed after the Division 2B referral commencement.

(3) Item 16 of Schedule 9 does not apply to the Division 2B State award.

**General**

<b>Knowledge ref no.</b>	KNO-000985	<b>Status</b>	Closed
<b>CCMS ticket no.</b>		<b>Research Officer</b>	 Jennifer Stonehouse
<b>Created By</b>	 Jennifer Stonehouse	<b>Created Date</b>	24/03/2014

**Enquiry Details**

<b>Date Received</b>	24/03/2014	<b>Priority</b>	Routine - High
<b>Business Unit</b>	 PA Client (Employer Org)	<b>Topic</b>	 Apprentices and trainees
<b>Contact</b>	 Katrina Marquez	<b>Instrument Type</b>	Pre-Fair Work Instrument
<b>Channel</b>	PA Inbox	<b>Employer</b>	
<b>Assigned Team</b>	Practitioner Assist	<b>Industry (ANZSIC)</b>	Construction
<b>Enquiry Type</b>	Advice request		
<b>Executive Description</b>	How are wages calculated for an e/ee doing a 3 year apprenticeship in Roof Plumbing in Queensland under the Order which has a 4 year apprenticeship		
<b>Research Description</b>	How are wages calculated for an e/ee doing a 3 year apprenticeship in Roof Plumbing in Queensland under the Order which has a 4 year apprenticeship.		

**Awards**

**Defer**

<b>Legal Clearing House</b>	No	<b>Industry Party Consultation</b>	No	<b>Client Response</b>	No
<b>Legal</b>	No	<b>Other</b>	No	<b>Policy</b>	No

**Deferred By****Date Deferred****Defer Returned**

**Returned** No

**Returned By**

**Date Returned****Submission**

<b>Approval Not Required</b>	Yes	<b>Submit to TL</b>	No	<b>Submit to EL</b>	No
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**Approval**

<b>TL Approver</b>		<b>EL Approver</b>	
<b>Approved</b>	No	<b>Return to Research Officer</b>	No
<b>Approved By</b>		<b>Date Approved</b>	



**Reason****Outcome**

<b>Outcome</b>	Advice Provided	<b>Date Finalised</b>	24/03/2014
<b>Outcome Details</b>	Advised that e/ee should be paid 1st, 2nd and 3rd year rate from the order as they progress through the apprenticeship. Consistent with 5127773.		
<b>Send Email</b>			

**KB Article**

<b>KB Article</b>	<b>KB Article No.</b>
<b>Article Details</b>	




**Notes****Notes**

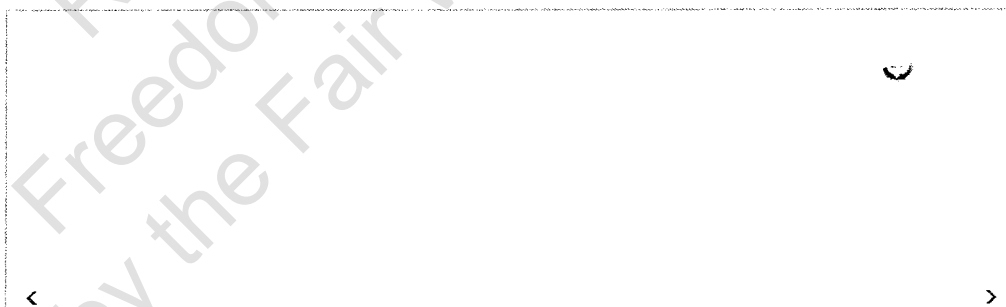
Released under the  
Freedom of Information Act  
by the Fair Work Ombudsman

**General**

<b>Knowledge ref no.</b>	KNO-004864	<b>Status</b>	Closed
<b>CCMS ticket no.</b>		<b>Research Officer</b>	 Joanne Cameron
<b>Created By</b>	 Joanne Cameron	<b>Created Date</b>	30/01/2015

**Enquiry Details**

<b>Date Received</b>	30/01/2015	<b>Priority</b>	Priority 3
<b>Business Unit</b>	 PA Client (Employer Org)	<b>Topic</b>	 Apprentices and trainees
<b>Contact</b>	 Lillian Zhou	<b>Instrument Type</b>	Modern Award
<b>Channel</b>	PA Contact Line	<b>Employer</b>	
<b>Assigned Team</b>	Practitioner Assist	<b>Industry (ANZSIC)</b>	Construction
<b>Enquiry Type</b>	Advice request		
<b>Executive Description</b>	What is an adult apprentice under the QLD apprentice order?		
<b>Research Description</b>	<p>What is an adult apprentice under the QLD apprentice order?</p> <p>Carpentry apprentice. Started apprenticeship with one ER now with another.</p> <p>1. non CC employed immediately before 1 Jan 2010; is apprentice under the order? I advised as per K220678 - ER under Div 2B at 21/12/2009 and had apprentice or trainee at 31/12/2010 (client asked 'what is immediately before 1 Jan?'); then as carpentry apprentice is CBWP under order, will be covered.</p> <p>2. What is an adult apprentice under the order? I advised that there is no defintion under Order, but that for MAs we consider that 'commenced an apprenticeship' is when it first started apprenticeship a contract of training within an apprenticeship. K262506</p> <p>3. HIA's view: under building award, it's started contract of training. So this apprentice would be adult. I advised as per K260278 that FWO considers it to be commenced apprenticeship not contract of training.</p> <p>4. If was under MA, would the apprentice be pre or post 1 Jan 2014? Started before 1 Jan 2014 with 1st ER and afte with 2nd. I advised as per K260278 that would be pre 1 Jan 2014.</p>		

**Awards****Defer**

<b>Legal Clearning House</b>	No	<b>Industry Party Consultation</b>	No	<b>Client Response</b>	No
<b>Legal</b>	No	<b>Other</b>	No	<b>Policy</b>	No

<b>Deferred By</b>	<b>Date Defered</b>
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**Defer Returned**

**Returned** No**Returned By****Date Returned****Submission****Approval Not  
Required**

Yes

**Submit to TL**

No

**Submit to EL**

No

**Approval****TL Approver****Approved**

No

**EL Approver****Return to Research  
Officer**

No

**Approved By  
Reason****Date Approved****Outcome****Outcome**

Advice Provided

**Date Finalised**

30/01/2015

**Outcome Details**

see above.

**Send Email**




No

**KB Article****KB Article****Article Details****KB Article No.****Notes****Notes**

## General

<b>Knowledge ref no.</b>	KNO-007844	<b>Status</b>	Closed
<b>CCMS ticket no.</b>		<b>Research Officer</b>	 Alena Mancini
<b>Created By</b>	 David Cotton	<b>Created Date</b>	30/06/2015

## Enquiry Details

<b>Date Received</b>	30/06/2015	<b>Priority</b>	Priority 1
<b>Business Unit</b>	 PA Client (Employer Org)	<b>Topic</b>	 Pay rates
<b>Contact</b>	 Lillian Zhou	<b>Instrument Type</b>	Modern Award
<b>Channel</b>	PA Contact Line	<b>Employer</b>	
<b>Assigned Team</b>	Practitioner Assist	<b>Industry (ANZSIC)</b>	Construction
<b>Enquiry Type</b>	Advice request		
<b>Executive Description</b>	Enquiry regarding Queensland apprentice wage rates for 1 July 2015		
<b>Research Description</b>	<p>Enquiry regarding Queensland apprentice wage rates for 1 July 2015</p> <p>Customer has 2 enquiries about why PACT has used a particular approach. PACT is providing different wage rates to HIA calculations.</p> <p>The first enquiry is regarding 1st year junior carpentry wage rates under AN140043 - Building Construction Industry Award - State 2003 and the Order. The difference is to do with the amount of the residual industry allowance. PACT is including a residual industry allowance of \$0.34. HIA believe this amount should be \$0.39.</p> <p>PACT calculations are as follows:</p> <p>Result \$9.05</p> <p>Calculations The employee's hourly base rate of pay \$9.05 Detail &gt;&gt;          •The employee's apprentice minimum hourly wage : \$9.05 Detail &gt;&gt;          ◦The employee's apprentice minimum hourly wage amount : \$9.05 Detail &gt;&gt;          ■The employee's apprentice minimum hourly wage under Stream 1 : \$9.05 Detail &gt;&gt;          ■The employee's junior apprentice minimum hourly wage under Stream 1 : \$9.05 Detail &gt;&gt;  <math>\\$8.72 + \\$0.34 = \\$9.05</math> ■The employee's junior apprentice hourly wage under Stream 1 : \$8.72 Detail &gt;&gt;  <math>40.00\% \times \\$21.79 = \\$8.72</math> ■The percentage to apply for the employee's Stream 1 apprenticeship : 40.00%          ■The minimum hourly wage applicable to the calculation of the employee's Stream 1 apprentice hourly wage : \$21.79 Detail &gt;&gt;          The minimum hourly wage for an employee engaged on carpentry, joinery, stonemasonry, plumbing or stair building work : \$21.79          ■The employee's hourly residual amount of the industry allowance under Stream 1 : \$0.34</p> <p>HIA believe the residual industry allowance should be calculated as follows applying the wage increases to the NAPSA amount and taking 60% of this figure:          HIA approach          \$21.70 full industry allowance - NAPSA clause 5.6.24          3.4%          2.9%          2.6%          3%          2.5%          x (100% - 40%) to achieve full industry allowance under clause 6.2.2 of Order</p> <p>Lillian is not sure why the person who previously did the calculation at HIA notes had applied 100% - 40% but the note says it is to to achieve full industry allowance under clause 6.2.2 of Order</p> <p>Customer would like an explanation of the PACT approach and to know why only 40% of the residual industry allowance is included, instead of the full amount in accordance with clause 6.2.2 of the Order.</p>		

Refer to K94344.

The second enquiry is the same apprentice classification, except for an adult apprentice. PACT provides a rate of \$17.86 and includes an industry allowance of \$0.57. Customer enquired how is the \$0.57 industry allowance calculated.

Advised that the enquiry requires research.

#### Awards

#### Defer

<b>Legal Clearing House</b>	No	<b>Industry Party Consultation</b>	No	<b>Client Response</b>	No
<b>Legal</b>	No	<b>Other</b>	No	<b>Policy</b>	No
<b>Deferred By</b>		<b>Date Deferred</b>			

#### Defer Returned

<b>Returned</b>	No	<b>Date Returned</b>	
<b>Returned By</b>			

#### Submission

<b>Approval Not Required</b>	Yes	<b>Submit to TL</b>	No	<b>Submit to EL</b>	No
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#### Approval


<b>TL Approver</b>		<b>EL Approver</b>	
<b>Approved</b>	No	<b>Return to Research Officer</b>	No
<b>Approved By Reason</b>		<b>Date Approved</b>	

#### Outcome

<b>Outcome</b>	Advice Provided	<b>Date Finalised</b>	1/07/2015
<b>Outcome Details</b>	per AN140043: Building Construction Industry Award - State 2003 OBO K94344: Residual amount - Queensland Building Construction Industry NAPSA		
<b>Send Email</b>	No		

#### KB Article

**KB Article****KB Article No.****Article Details****Notes****Notes**

 **Title: Note created on 1/07/2015 1:54 PM by Alena Mancini**

Note created on 1/07/2015 1:54 PM by Alena Mancini

Edited 1/07/2015 4:00 PM by Alena Mancini

PER AN140043: Building Construction Industry Award - State 2003

Industry allowance (5.6.24) 21.70

= 0.57 per hour

**PER PSS:**

The hourly rates of pay in the table on the previous page have been calculated in accordance with clause 5.1.5 of the 26 March 2006 version of the award and include the amounts specified for the industry, tool (where applicable) and special allowances.

1 Oct 2008

Construction Worker Level 3 (CW3)

Artificial Stoneworker, Carpenter and/or Joiner, Marble and  
Slate Worker, Stonemason, Plumber \$18.69

...

Apprentices

Wage Level 1

% of Tradesperson's basic hourly rate 40%

Carpentry (CW3) \$7.48

-> the apprentice rate is 40% of the relevant trade rate

PER K94344: Residual amount - Queensland Building Construction Industry NAPSA

Minimum rates of pay for apprentices employed by Group 1 employers are contained in the Pay Scale derived from AN140043, calculated in accordance with the Order.

As the apprentice rates have been calculated as a percentage of the tradesperson rate (which is inclusive of the 'follow the job' loading), only a proportion of the Industry allowance has been included.

The Order provides that apprentices are entitled to the full amount of the Industry allowance.

Wage Level/ Year of Apprenticeship	1	2	3	4
% of Tradesperson's Industry Allowance	40%	55%	75%	90%
Residual Amount (per hour)	0.3354	0.2470	0.1292	0.0408

Calculation Method - Residual amount added to weekly rate after the Annual Wage Review (AWR) increases have been applied

full hourly = 0.57 ... 1st year already gets 40% = 0.228 = residual should be 60% of 0.57 =

CURRENT Adult rate with increases applied: \$18.69 + 0.69, 3.4%, 2.9%, 2.6%, 3% = 21.79

RE ADULT app.

OBO SCHEDULE 4

6.3 New Adult apprentices and Trainees in the Civil Construction Training Package and the General Construction Training Package

Where an adult person enters into an apprenticeship or traineeship from the above training packages, they shall receive no less than an amount equivalent to the Queensland Minimum Wage as amended from time to time: ...


The Order provides that apprentices are entitled to the full amount of the Industry allowance - therefore 0.57

OBO

6.2.2 Industry Allowance

Apprentices shall be entitled to the full industry allowance prescribed by the Award.

The industry allowance is NOT increased by AWR


**General****Knowledge ref no.** KNO-009862**Status** Closed**CCMS ticket no.****Research Officer**  Alena Mancini**Created By**  Alena Mancini**Created Date** 30/10/2015**Enquiry Details****Date Received** 30/10/2015**Priority** Priority 1**Business Unit**  PA Client (Employer Org)**Topic**  Apprentices and trainees**Contact**  Chloe Foyster**Instrument Type** Pre-Fair Work Instrument**Channel** PA Contact Line**Employer****Assigned Team** Practitioner Assist**Industry (ANZSIC)** Electricity, gas and water supply**Enquiry Type** Advice request**Executive Description** PACT discrepancy?**Research Description**

electrical apprentices - OBO - different percentages and trade rate to them  
 - using 32% for first year sch 22  
 - trade rate PSS - where are they AN140103 - also different, are applying AWR increases - 18.13 p/h,  
 we have 20.71  
 can talk to anyone there

**Awards**

**Defer****Legal Clearing House** No**Industry Party Consultation** No**Client Response** No**Legal** No**Other** No**Policy** No**Deferred By****Date Deferred****Defer Returned****Returned** No**Returned By****Date Returned****Submission****Approval Not Required** Yes**Submit to TL** No**Submit to EL** No**Approval****TL Approver****EL Approver**



**Approved** No**Return to Research Officer** No**Approved By Reason****Date Approved****Outcome****Outcome** Advice Provided**Date Finalised** 2/11/2015**Outcome Details** advised per notes and esp K253468: AN140103 to MA000025 Queensland Electrical Apprentices Rates of Pay Spreadsheet**Send Email** No**KB Article****KB Article****KB Article No.****Article Details****Notes****Notes** **Title: Note created on 8/10/2018 12:06 PM by Loraine Woodford**


Note created on 8/10/2018 12:06 PM by Loraine Woodford

Edited 8/10/2018 12:06 PM by Loraine Woodford


 **Title: File Attachment**

Note created on 2/11/2015 11:58 AM by Alena Mancini

Edited 2/11/2015 11:59 AM by Alena Mancini

 MA000025 to AN140103.xlsx (71,526 Byte(s))

Spreadsheet of calculated rates attached to K253468

 **Title: Note created on 2/11/2015 11:23 AM by Alena Mancini**

Note created on 2/11/2015 11:23 AM by Alena Mancini

Edited 2/11/2015 11:23 AM by Alena Mancini

PACT:

<http://calculate.fairwork.gov.au/Home/LaunchSession?srn=211530635970>

\$8.73

\$20.71

Allowance amount \$0.45 (\$17.12 / 38)

 **Title: Note created on 30/10/2015 4:25 PM by Alena Mancini**

Note created on 30/10/2015 4:25 PM by Alena Mancini

Edited 2/11/2015 1:27 PM by Alena Mancini

BASED ON K253468

This calculation derives rates from:

the Order – Apprentices' and Trainees' Wages and Conditions (Excluding Certain Queensland Government Entities) 2003 [AN140326] ('Order'); and  
Electrical Contracting Industry Award – (State) 2003 [AN140103] ('Electrical NAPSA')

The Order does not provide for junior apprentice rates. Therefore, our view is that the rate of pay will be based on Schedule 22, Clause 2.1.1 of the Order.

Schedule 22, Clause 2.1.1 of the Order provides that a 1st year apprentice shall receive 40% of the tradesperson's rate in the relevant industrial instrument.

A note under this provision further provides that an apprentice paid under the Electrical Contracting Industry Award or its successor shall receive the following additional payment:

First Year/level - 32% of the additional payment of \$53.50 applicable to an Electrical Worker Grade 5.

The Pay Scale derived from the Electrical NAPSA provide the basic hourly rate which appear to include both the minimum wage and the additional payment provided for under clause 5.4.1 of the Electrical NAPSA.

Based on this information, our view is that the additional payment will need to be disaggregated from the basic hourly rate in the Pay Scale to determine the tradesperson's rate (for the purposes of calculating the apprentice rate under the formula provided for under Sch.22, Cl.2.1.1 of the Order).

Calculating PMA base rates of pay Example:

Adult rate calculation

(Adult Weekly rate for Grade 5 as at 27 March 2006) \$576.20 / 38  
= \$15.1632 per hour

Incorporating combined increases from 2006, 2007 and 2008 wage reviews:

\$15.1632 + \$1.56  
= \$16.7232 per hour

.....

My calculations

ADD INCREASES [K259032: Annual Wage Reviews Summary - pre 2006 to 2015]:

K261992: Annual Wage Review 2014

To get the current base rate of pay:

Determine the applicable weekly transitional pay scale rate of pay derived from the award-based transitional instrument which covered the employer and employee, [16.7232 x 38 = 635.4816]

Apply the \$26 per week 2010 Annual Wage increase to the relevant weekly transitional pay scale rate, [635.4816 + 26 = 661.4816]

Apply the 3.4% 2011 Annual Wage increase to the relevant transitional pay scale rate of pay and round to the nearest 10 Cents [661.4816 + 3.4% = 683.9720 = 684]

Apply the 2.9% 2012 Annual Wage increase to the relevant transitional pay scale rate of pay and round to the nearest 10 Cents [684 + 2.9% = 703.836 = 703.80]

Apply the 2.6% 2013 Annual Wage increase to the relevant transitional pay scale rate of pay and round to the nearest 10 Cents [703.80 + 2.6% = 722.0988 = 722.10]

Apply the 3% 2014 Annual Wage increase to the relevant transitional pay scale rate of pay and round to the nearest 10 Cents [722.10 + 3% = 743.763 = 743.80]

[CORRESPONDS WITH SPREADSHEET - attached above]


THEN 2015 [2.5%] K269662 [743.80 + 2.5% = 762.395 = 762.40] = hourly 20.06

AND if on site building chosen in PACT ADDS 21.30 allowance in clause 5.8.1 = ADDED AT EVERY STEP OF THE WAY IN INCREASES -> PACT rate

Determine the applicable apprentice / trainee percentage from the Order,

Apply the relevant apprentice / trainee percentage from the Order to the transitional pay scale rate to determine the current base rate of pay.

.....

 Title: Note created on 30/10/2015 3:49 PM by Alena Mancini

Note created on 30/10/2015 3:49 PM by Alena Mancini

Edited 30/10/2015 4:18 PM by Alena Mancini

OBO NAPSAs: AN140326

K253468: AN140103 to MA000025 Queensland Electrical Apprentices Rates of Pay Spreadsheet  
That provides that the 32% is an additional amount ontop of the apprentice percentage.

Electrical Contracting Industry Award - State 2003 (Code: AN140103)

Under the electrician apprenticeship (qualification code: UEE30807) and in the Order for Apprentices and Trainees Wages and Conditions (the Order), Schedule 22 - Clause 2.1 apprentices were entitled to the relevant percentage of the tradesperson's rate as specified in the PMA.

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Released under the  
Freedom of Information Act  
by the Fair Work Ombudsman

s.22 - Irrelevant to request

**From:** YouCanBook.Me <notifications@youcanbook.me>  
**Sent:** Monday, 21 December 2015 12:32  
**To:** practitionerassist@gmail.com  
**Subject:** CSS-KNO-000725 booked: Ruby Nielsen r.nielsen@hia.com.au (NMDA-WDHH-GCZT)

**Follow Up Flag:** Follow up  
**Flag Status:** Completed



## You have a new booking

booked: Ruby Nielsen r.nielsen@hia.com.au

---

### Booking details:

Booking: Practitioner Assist  
Start: Monday, 21 December 2015 16:00  
End: Monday, 21 December 2015 16:30  
Duration: 30 minutes  
Their timezone: Australia/Sydney  
Their start time: Monday, 21 December 2015 16:00  
Their end time: Monday, 21 December 2015 16:30  
Ref: NMDA-WDHH-GCZT  
Calendar: practitionerassist@gmail.com

---

### Name:

Ruby Nielsen

### Email:

r.nielsen@hia.com.au

### Organisation name:

Housing Industry Association

**Please enter your question:**

Do apprentices who are frozen under the Qld order for apprentices NAPSA award derive only their pay rates from this award, or are their entitlements derived from the NAPSA as well.

My query relates specifically to an employees payment for shift work and whether clause 6.4.d of AN140045 applies or whether cl 28.3 of the Joinery and Building Trades Award applies.

**Please enter your phone number:**

+61423498179

**(suggested text) Please enter your name:**

Ruby

---

[Go to your calendar](#)

[Click here to cancel this booking.](#)

[Click here to reschedule this booking.](#)

Unsubscribe Options:

- [Stop alerts for this calendar](#)

---

YouCanBook.Me will keep details of this booking in 'your account' > 'my bookings'.

[Unsubscribe from these emails](#)



## Knowledge Enquiry

**KNO-000725**Enquiry Ref No  
KNO-000725Enquiry Status  
ClosedResearch Officer  
 Alena Mancini**GENERAL****ENQUIRY DETAILS**

**Date Received** 21/12/2015 **Priority** High

**Enquiry Type** Advice request **Nexus Matter No.**

**Source Enquiry** **Team** Practitioner Assist

**ENQUIRY DESCRIPTION****Topic****Industry** Construction **Instrument Type****Executive Descrip.** entitlements for apprentices under OBO +61423498179

**Research Descrip.** Do apprentices who are frozen under the Qld order for apprentices NAPSA award derive only their pay rates from this award, or are their entitlements derived from the NAPSA as well.

My query relates specifically to an employees payment for shift work and whether clause 6.4.d of AN140045 applies or whether cl 28.3 of the Joinery and Building Trades Award applies.


**ACT VITIES AND NOTES**

**Title**  
21/12 4.00 left message for customer to contact me  
[Alena Mancini 21/12/2015 4:00 PM](#)

**Title:**  
K220678 Wages and Conditions for Apprentices and Trainees in Queensland  
Mode n awards don apply to some apprentices and trainees in Queensland. This is because an award-based transitional instrument (ABTI) or a Division 2B State award (Div 2B award) affected by an order of a State industrial body, will continue to cover an employee and employer after 1 January 2010 (for constitutional corporations) and 1 January 2011 (for State referral), where it:  
a) sets minimum terms and conditions for an employee to whom a training arrangement applies; and  
b) provided for competency-based wage progression (CBWP) or provided solely for the provision of tools for use by apprentices; and  
c) covered an employee or employer immediately before 1 January 2010 (constitutional corporations only).  
This means that the Order – Apprentices and Trainees Wages and Conditions (Excluding Certain Queensland Government Entities) 2003 (the Order) and the Order – Supply of Tools to Apprentices (the Tools Order) is preserved for some apprentices and trainees in Queensland.  
[Alena Mancini 21/12/2015 3:27 PM](#)

CLIENT DETAILS

CLIENT DETAILS

Source	PA Inbox	Copy To
Internal Business Unit	PA Client (Employer Org)	Internal Contact
External Business Unit		External Contact  Ruby Nielsen

EMPLOYER / EMPLOYEE DETAILS

Employer	Occupation
Employer ABN	Main Duties
State	
Employee Status	

INDUSTRIAL INSTRUMENTS

Modern Award	Title	Created On	Modern Award	Title	Cre.
No Modern Award records are available in this view.			No Pre Modern Award records are available in this view.		
0 - 0 of 0 (0 selected)		Page 1	0 - 0 of 0 (0 selected)		Page 1



INFOLINE ENQUIRY DETAILS (IF ASSOCIATED)

QUESTIONS AND BACKGROUND INFORMATION

Description

Legislation/Industrial Instruments  
Considered

Question

View

Background information

CONSULTATION

Date Started	Consultation Type	Consulted By	Consultation Complet...	Date Completed...	Created On
No Consultation records are available in this view.					
0 - 0 of 0 (0 selected)					Page 1

**APPROVAL/OUTCOME****SUBMISSION**

RO Approver	Yes	Submit to TL	No	Submit to EL	No
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**TLEL Approval****TL APPROVAL**

Approved	No
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Approver
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Date Approved
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Returned	No
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Returned By
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Date Returned
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Reason
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**EL APPROVAL**

Approved	No
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App over
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Date Approved
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Returned	No
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Returned By
-------------

Date Returned
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Reason
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**OUTCOME****OUTCOME DETAILS**

Date Finalised	21/12/2015
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Outcome	Advice Provided
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Letter Attached	No
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**Outcome Details**

per K220678 Modern awards don't apply to some apprentices and trainees in Queensland. Where the relevant schedule provides for competency-based wage progression or the employees are covered by the Tools Order, the Order and the Tools Order will continue to apply as ABTIs for existing employees and new employees (engaged after 1 January 2010) under training arrangements.

Knowledge Object Title	SharePoint Revision...	Link	Knowledge Object Title	Link
No Affected Knowledge Object records are available in this view.			No Linked Knowledge Object records are available in this view.	
0 - 0 of 0 (0 selected)		Page 1	0 - 0 of 0 (0 selected)Page 1	

**ASSOCIATED RECORDS**

Connected To	Role (To)	Description
No Connection records are available in this view.		
0 - 0 of 0 (0 selected)		Page 1

**ADMINISTRATION****Owner**  Alena Mancini**Modified By**  Service Process**Created On** 21/12/2015 3:21 PM**Modified On** 21/12/2015 4:09 PM

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[Search Employer](#) [View Employer](#)



## Knowledge Enquiry

**KNO-005991**Enquiry Ref No  
KNO-005991Enquiry Status  
ClosedResearch Officer  
 David Cotton**GENERAL****ENQUIRY DETAILS**

<b>Date Received</b>	29/08/2016	<b>Priority</b>	High
<b>Enquiry Type</b>		<b>Nexus Matter No.</b>	
<b>Source Enquiry</b>		<b>Team</b>	Practitioner Assist

**ACTIVITIES AND NOTES**

**Title:**  
#QLD2016  
Lisa Forman 23/09/2016 8:07 AM

**ENQUIRY DESCRIPTION****Topic** Apprentices and trainees**Industry** Construction **Instrument Type** Modern Award**Executive Descrip.** Spencer. Enquiry regarding Queensland apprentices**Research Descrip.** Spencer. Enquiry regarding Queensland apprentices

I would like to speak to someone regarding Queensland Building and Construction STATE award as per Order - Apprentices' And Trainees' Wages And Conditions (excluding Certain Queensland Government Entities) 2003. I would like to know the rational for having Queensland apprentices on an Order and who made the decision to have an order (Industrial Relations Commission?). Also as this information is for members, I would like to know what publically accessed information such as InfoSheets or a website that members and I could access to find

such information.

Your assistance in this matter is most appreciated.

## CLIENT DETAILS

### CLIENT DETAILS

Source	PA Contact Line	Copy To	
Internal Business Unit	PA Client (Employer Org)	Internal Contact	
External Business Unit		External Contact	 Gabrielle Brady

### EMPLOYER / EMPLOYEE DETAILS

Employer	Occupation
Employer ABN	Main Duties
State	
Employee Status	

## INDUSTRIAL INSTRUMENTS

Modern Award	Title	Created Pre Modern Award	Title	Cre
No Modern Award records are available in this view.		No Pre Modern Award records are available in this view.		
0 - 0 of 0 (0 selected)	Page 1	0 - 0 of 0 (0 selected)	Page 1	

**INFOLINE ENQUIRY DETAILS (IF ASSOCIATED)****QUESTIONS AND BACKGROUND INFORMATION**

Description

Legislation/Industrial Instruments  
Considered

Question

View

Background information

**CONSULTATION**

Date Started	Consultation Type	Consulted By	Consultation Complet...	Date Completed...	Created On
No Consultation records are available in this view.					
0 - 0 of 0 (0 selected)					

Page 1

**APPROVAL/OUTCOME****SUBMISSION**

<b>RO Approver</b>	<b>Yes</b>	<b>Submit to TL</b>	<b>No</b>	<b>Submit to EL</b>	<b>No</b>
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**TLELApproval****TL APPROVAL**

<b>Approved</b>	<b>No</b>
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<b>Approver</b>
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<b>Date Approved</b>
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<b>Returned</b>	<b>No</b>
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<b>Returned By</b>
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<b>Date Returned</b>
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<b>Reason</b>
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**EL APPROVAL**

<b>Approved</b>	<b>No</b>
-----------------	-----------

<b>Approver</b>
-----------------

<b>Date Approved</b>
----------------------

<b>Returned</b>	<b>No</b>
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<b>Returned By</b>
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<b>Date Returned</b>
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<b>Reason</b>
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**OUTCOME****OUTCOME DETAILS**

<b>Date Finalised</b>	29/08/2016
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<b>Outcome</b>	Advice Provided
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<b>Letter Attached</b>	No
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**Outcome Details**

Advised that the Order for apprentices was part of the Queensland Industrial Relations System where the arrangement was that apprentice provisions would come from the Order generally read in conjunction with the award, rather than being contained in the award. Advised there may be an explanatory memorandum if more information is required regarding the making of an order.

Advised that with the Fair Work Act and referral of



powers, Regulation 3B.02 of the Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009 provided for continued coverage in certain circumstances, for example where there was competency based wage progression.

This may be been something that the relevant stakeholders wanted preserved on referral of powers.

Advised that we do not currently have any fact sheets published on our website dealing with continued coverage.

Advised that we are currently reviewing our position on the continued operation of the Order.

Customer does not require a call back.

Knowledge Object Title	SharePoint Revision...	Link	Knowledge Object Title	Link
No Affected Knowledge Object records are available in this view.			No Linked Knowledge Object records are available in this view.	
0 - 0 of 0 (0 selected)		Page 1	0 - 0 of 0 (0 selected)	
			Page 1	

#### ASSOCIATED RECORDS

Connected To	Role (To)	Description
No Connection records are available in this view.		
0 - 0 of 0 (0 selected)		Page 1

#### ADMINISTRATION

**Owner**  David Cotton

**Modified By**  David Cotton

**Created On** 29/08/2016 9:23 AM

**Modified On** 29/08/2016 10:56 AM

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[Search Employer](#)   [View Employer](#)

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