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Employment Matters

First Fair Pay Commission Ruling

The establishment of the Australian Fair Pay Commission was one of the more significant features of the federal government's "Work Choices" reforms. The five-member Commission, chaired by economist Professor Ian Harper, has been given the role of setting and adjusting minimum wage rates under the Workplace Relations Act 1996, a task previously performed by the Australian Industrial Relations Commission (AIRC).

On Thursday 26 October 2006 the Fair Pay Commission released its first ruling, which will take effect from 1 December 2006. The ruling has two main components:

- > the adjustment of the standard federal minimum wage (FMW), previously set at \$12.75 per hour, and now to be lifted to \$13.47 per hour;
- > increases of either \$0.72 per hour or \$0.58 per hour in the basic wage rates set by Australian Pay and Classification Scales (APCSs) for workers covered by the federal system.

APCSs were derived from award rates of pay as they stood on 27 March 2006 when the Work Choices amendments took effect. For most workers covered by APCSs, their award rates had last been increased in or from mid-2005.

Increase to the standard federal minimum wage

The standard FMW will now be \$13.47 an hour or \$511.86 per week, an increase of around 5.6%.

In deciding on an increase of this magnitude for both the FMW and (as detailed below) many APCSs, the Fair Pay Commission identified the following key factors:

- > "the close to 18 month period since the last pay increase for Pay Scale reliant employees;
- > the sensitivity of low-paid employment to changes in wage levels, as well as the incentives for individuals to seek and remain in paid employment;
- > the fact that the economy and labour market have continued to perform strongly, although not uniformly;
- > movements in consumer prices, as well as incipient inflationary pressure (and its effect on interest rates); and
- > the requirement to provide a safety net for the low paid."

Superficially at least, both the reasoning and the result mirror the views adopted by the AIRC over recent years.

The ruling will be a grave disappointment to those who had hoped that the new body would hold down minimum wage rises in a bid to stimulate employment growth.

Increases to APCSs

For APCSs up to and including \$18.42 per hour (equivalent to \$700 per week), there is to be a flat increase of \$0.72 per hour (or \$27.36 per week).

For APCSs over \$18.42 per hour, there is to be a smaller increase of \$0.58 per hour (\$22.04 per week). Hence for workers on higher minimum rates, the percentage increase is much smaller. However the Fair Pay Commission estimates that the great bulk of workers actually affected by its decision will get the higher increase.

There is also to be an additional increase of \$17 per week for any APCS that had not (for whatever reason) been adjusted prior to Work Choices to reflect the AIRC's 2005 wage case decision or its State counterparts.



Establishment of special FMWs for workers with disabilities

The Fair Pay Commission has established two new special FMWs for workers with disabilities. For those who are “unable to perform the range of duties to the competence level required because of the effects of a disability on their productive capacity”, the special FMW is to be a percentage of the standard FMW based on their assessed capacity, or \$64 per week, whichever is higher.

For those whose productive capacity is unaffected, and who are not juniors or trainees, the special FMW is the same as the standard FMW.

The Commission has also established a new APCS that extends the pro rata wage rates established under the Supported Wage System (SWS) to employees previously covered by awards that did not have SWS provisions.

Juniors and trainees

For the time being at least, there is to be no special FMW for either juniors or trainees. Existing APCS rates for such workers will be subject to the same increase as for adult rates, though prorated to ensure that relativities between the junior/trainee and adult rates are maintained.

For technical reasons, the revised National (or State) Training Wage rates referred to in many awards are set out in Schedule 1 to the Commission’s decision, rather than simply being varied by general order.

Effect on APCSs below the FMW

Prior to this ruling there were some APCSs, derived from obsolete or unusual awards, that were in fact lower than the standard FMW, even for adult workers without disabilities and who were not trainees.

In accordance with s 207 of the Act, the ruling makes it clear that as from 1 December 2006 those APCSs will be automatically increased so as to equal the standard FMW.

Who the ruling affects

The Fair Pay Commission’s ruling affects only federal system employers (generally trading corporations) who are subject to the Australian Fair Pay and Conditions Standard set by Part 7 of the Act.

If such an employer has been paying an employee the bare award rate that applied as of 27 March 2006, or the standard minimum wage, they are now required to lift that wage rate in accordance with the decision. This will have particular significance in sectors such as hospitality and retail, which have a high proportion of “award-reliant” (or now APCS-reliant) workers.

The ruling will not on the other hand affect federal system employers who are already paying above the new minimum (whatever that might be in a particular case), or whose workers remain covered by a certified agreement or AWA made prior to the Work Choices reforms.

“Excluded” employers (such as sole traders, partnerships and many State government agencies) are not affected at all. If they have workers covered by State awards, they must continue to observe those award rates, most of which were increased earlier in this year as a result of a series of State wage cases.

There are also some excluded employers covered by what are called transitional federal awards. Workers under such instruments will have to wait a little longer for any automatic wage increase, since the Fair Pay Commission ruling does not affect them. Instead the AIRC will have to make a decision on any increases. The AIRC had deferred hearing an application to vary rates in transitional awards, since under Schedule 6 of the Act it is required to “have regard to” (though not necessarily follow) the decisions and views of the Fair Pay Commission.

The next ruling

The Fair Pay Commission has announced that its next decision can be expected in “mid 2007”. This effectively returns the federal wage-fixing system to its previous calendar of mid-year decisions. It also heightens the impression that, despite all the fanfare about having a new and different system, it is “business as usual” when it comes to setting safety-net wages for the lower paid.

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