

Some Minimum Wage Issues and Questions

Briefing Note

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Background

1. The last major function of the Australian Industrial Relations Commission (AIRC) is “award modernisation”. The AIRC is required to establish a new system of modern awards which will come into operation on 1 January 2010. The classifications, wage rates and other terms and conditions of employment will be drawn from a variety of industrial instruments, especially the current wage rates set by the Australian Fair Pay Commission (AFPC).
2. The AIRC has prepared modern awards by reference to the wage rates set by the AFPC in July 2008, and which came into operation in October 2008. It was anticipated that these rates would be adjusted to reflect the AFPC’s 2009 decision. On 7 July the AFPC announced that it would not grant any increase in wage rates. The AFPC’s written reasons for decision contain a copy of the instrument giving effect to its decision. The instrument is dated 12 June 2009, some four and a half months before the date on which any increases would have come into effect, 1 October 2009.
3. The AFPC’s decision was announced only days before substantial evidence became available of the strength of the Australian economy and the improving prospects for recovery. The good news may have been sufficient to persuade the AFPC to adopt another course had it made its decision closer to October 2009. Because the AFPC has since been abolished its wage freeze can only be lifted by another tribunal. Although it might be possible for the AIRC to re-visit the issue during award modernisation, practically it would not have the time to do so given the workload and timelines that it is working under.
4. About one in five Australian workers receives no more than the safety net wage. Most of these low paid workers are covered by decisions of the AFPC. The others are covered by State tribunals. The AFPC-covered workers have not simply had a wage freeze; they have had a real wage reduction at a time when the rate of inflation, as measured by the Consumer Price Index, over the relevant annual period was 2.5%.
5. In each of the States in which minimum wages are set (ie the States other than Victoria) decisions have been made in recent months to increase minimum wages. Even prior to this year’s decisions the Federal rates had fallen below State rates. The Federal Minimum Wage of \$543.78 per week is the lowest in the country. The comparative figures are: \$568.20 (in NSW and Queensland), \$569.70 (Western Australia) and \$560.65 (South Australia). The difference between the unweighted average of these States and the Federal Minimum Wage is \$22.96 per week. (The

Tasmanian Industrial Commission has not handed down its 2009 decision.). The discrepancy between State and Federal rates continues into higher-paid classifications. For example, a comparison of Federal and NSW rates shows that the difference is \$23.30 per week at the trades-qualified level (the C10 classification) and at the C4 classification the difference is \$43.20 per week (\$814.90 and \$771.70). These differences have emerged since the introduction of the *Work Choices* amendments and as a result of the decisions of the AFPC. Until 2005 there was consistency between Federal and State wage rates in these rates and in other key classification structures.

6. One of the major concerns about the proposed referral of industrial powers by the States to the Commonwealth is the current disparities in wages. In broad terms, the State rates cover unincorporated employers, while the AFPC's rates cover incorporated employers throughout Australia and unincorporated employers in Victoria and the Territories. Safety net rates in a particular industry or occupation should not depend on the legal status of the employer.
7. The only other tribunal to institute a wage freeze (or "wage pause") in 2009 was the Remuneration Tribunal which sets the salaries, etc of Federal judges, public officeholders, members of parliament, etc. It did this by announcing in May 2009 that it would not consider its 2009 review until September 2009.
8. It is possible that later this month the Remuneration Tribunal will lift its wages freeze on the salaries of high income earners while the wages of low income earners will continue to be frozen. If this occurs it would raise questions of equity and would probably be controversial.

The New Wage-setting System

9. Fair Work Australia (FWA) is now the primary wage-setting authority in Australia. It is required by Part 2-6 of the *Fair Work Act 2009* (the Act) to set and vary minimum wages. The powers to set minimum wages in modern awards and to make a minimum wage order (covering employees who are not covered by modern awards) are to be exercised by the Minimum Wage Panel of FWA.
10. The Act specifies the "minimum wages objective", which requires FWA to establish and maintain a safety net of fair minimum wages, taking into account certain social and economic factors. The minimum wages objective is set out in subsection 284(1):

"FWA must establish and maintain a safety net of *fair minimum wages*, taking into account:

- (a) the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth; and
- (b) promoting social inclusion through increased workforce participation; and
- (c) relative living standards and *the needs of the low paid*; and

- (d) the principle of equal remuneration for work of equal or comparable value; and
- (e) providing a comprehensive range of fair minimum wages to junior employees, employees to whom training arrangements apply and employees with a disability.” (Emphasis added)

Three Significant Changes

11. The current provision is essentially a return to the pre-*Work Choices* provisions which were introduced by the Coalition Government in 1996. Section 88B(2) of the *Workplace Relations Act*, as enacted in 1996, provided that the Australian Industrial Relations Commission:

“...must ensure that a safety net of fair minimum wages and conditions of employment is established and maintained, having regard to the following:

- (a) the need to provide fair minimum standards for employees in the context of living standards generally prevailing in the Australian community;
- (b) economic factors, including levels of productivity and inflation, and the desirability of attaining a high level of employment;
- (c) when adjusting the safety net, the needs of the low paid.”

12. The minimum wages objective requires that FWA establishes a safety net of *fair* minimum wages. It contrasts with the statutory function of the AFPC, which, despite its name, was not required to set fair minimum wages. This is the first point of distinction between the AFPC’s charter and that given to FWA.

13. The second point of distinction between the AFPC and FWA is in the nature of the respective functions. The AFPC’s broad statutory function was a macroeconomic one: “to promote the economic prosperity of the people of Australia”. It was to have regard to “providing a safety net for the low paid” (amongst others), but minimum wages decision-making was essentially seen as an instrument of macroeconomic policy. FWA is to take into account macroeconomic factors when setting fair minimum wages. The difference is significant.

14. The third point of distinction is in regard to the needs of the low paid. The needs of the low paid were not mentioned in the AFPC’s statutory function. One would expect that the notion of a safety net must be related to the “needs” of the low paid, but the AFPC *never* sought to discover the needs of the low paid in contemporary Australia. Its only evidence about the needs of the low paid was the Henderson Poverty Line, as updated each quarter by the Melbourne Institute. It regarded that material as sufficient.

15. The needs of the low paid played no part in the AFPC's substantial research program, despite frequent requests for such research. This had nonsensical consequences; for example, the Henderson Poverty Line for sole parents does not take into account child care costs, and so underestimates their needs and overestimates their living standards. Another issue that left the AFPC unmoved was housing costs; for example, the Henderson Poverty Line estimate of housing costs for a family of four in December 2008 (which was used by the AFPC in its 2009 decision) was \$176.11 per week, a totally unrealistic figure. These matters have had an impact on the setting of safety net wages based on needs.

Fair Work Australia's Inaugural Wage Review

16. FWA is required to conduct and complete an annual wage review in each financial year. The decisions are to have effect from 1 July in each year. When conducting the annual review the Minimum Wages Panel of seven members must include at least three Minimum Wage Panel Members, ie persons who are appointed to FWA specifically to perform these wages functions. The announcement of the appointment of these members has not yet been made.
17. FWA's inaugural wages review will present a number of important issues.
18. First, it will have to deal with the consequences of the AFPC's wages freeze. A wage freeze defers, but does not eliminate, safety net wage claims. By the time FWA's decision is handed down in mid-2010, there will be another annual movement in the Consumer Price Index, perhaps bringing the accumulated real wage loss for safety net-dependent workers to about 5%. The increases in average wages in the rest of the workforce will in excess of this figure. FWA will need to consider how this loss of real wages might be rectified.
19. Second, FWA will need to "take into account...the needs of the low paid". Before *Work Choices* the AIRC was under a similar obligation, but that obligation was in a different context. The constitutional base for decision-making has changed. Before *Work Choices* the AIRC arbitrated "industrial disputes", including disputes about wages. Its essential role was to make a decision on the merits of the material put forward by the parties to the dispute and interveners. Although it had the power to inform itself of matters independent of the evidence put by the parties, it was a little used power. The introduction of tribunal-initiated research by the *Work Choices* amendments was a positive development.
20. The capacity of FWA to undertake or commission research for the purposes of a wages review is now explicit, though not mandatory. Section 291 provides that the research is to be published so that submissions can be made on that material. The AFPC's research unit has been transferred to FWA. Working backwards from 1 July 2010, it is clear that proposals for research will need to be raised with FWA well before the end of 2009.
21. Third, FWA is likely to be dealing with a comprehensive system in which most States have referred their industrial powers to the Commonwealth. It will need to

consider a situation in which the safety net wage rates in the States are generally and substantially higher than they are federally. This may be (and should be) an issue that will be addressed in the arrangements for the transfer of State powers to the Commonwealth. At the least, there will need to be arrangements to prevent real wage reductions being suffered by transferring employees.

Some Questions

22. The setting of safety net wages that take into account the needs of the low paid requires information about those needs. Research into these needs is necessary for the proper exercise of FWA's statutory function, particularly given its statutory and administrative capacity to undertake that research. Whether this occurs will depend on the Commonwealth to a large extent. Not only does it need to ensure sufficient funding for research to be undertaken and commissioned, it needs to make submissions to FWA in support of a sufficient and targeted research program. A number of questions for the Commonwealth arise out of the foregoing:
- (a) What are the current research resources of FWA? In particular, is there capacity to undertake research into the needs of low paid workers and their families?
 - (b) How does the Commonwealth propose that FWA will become informed about the needs of low paid workers for the purpose of setting safety net wages?
 - (c) Has any decision been made about the kinds of research to be undertaken by, or on behalf of, FWA for the purpose of the forthcoming minimum wages review? In particular, has any decision been made regarding the undertaking of research on the living costs of low paid workers and their families?
 - (d) Will the Commonwealth allocate any funds for the commissioning of research into the living costs of low income working families? In particular, will it ensure funding for research into the child care costs of low paid sole parents and into the housing costs of low paid working families?
 - (e) How does the Commonwealth propose that FWA deal with the consequences of the AFPC's wage freeze, including the reduction in the real wages of low paid safety net workers?
 - (f) Has the Government any policy concerning the way in which the present disparity in State and Federal wage rates should be addressed by FWA?
 - (g) How will workers who are currently under State awards be protected against lower Federal safety net rates when their States transfer their industrial powers to the Commonwealth?