

Australian Fair Pay Commission

Minimum Wages Review 2008

Supplementary Submission by the Australian Catholic Council for Employment Relations

Re: Preserved Pay Scale derived from Social and Community Services Employees (State) Award

Introduction

In the course of its 2008 wage review the Australian Fair Pay Commission (“AFPC”) has received submissions from National Disability Services and Australian Business Industrial in relation to the preserved wage rates derived from the *Social and Community Services Employees (State) Award* (“the NSW SACS Award”). The AFPC has sought stakeholder views regarding the effect of section 208(4) of the *Workplace Relations Act 1996* (“WR Act”) on this Pay Scale (“the SACS Pay Scale”).

Section 208(4) of the WR Act provides that if an Australian Pay and Classification Scale (such as the SACS Pay Scale) contains work value change or pay equity increases, either in whole or part, determined by an industrial body that are to operate after 27 March 2006, then the preserved wage rate is taken to include these provisions in full.

For the reasons set out below, the Australian Catholic Council for Employment Relations (“ACCER”) supports the outcome advocated by National Disability Services and Australian Business Industrial

The NSW SACS Award

Immediately prior to the commencement of the *Work Choices* amendments to the WR Act on 27 March 2006, employees in the social and community services sector in New South Wales were covered by the NSW SACS Award. This award included wage provisions that were made by consent on 3 March 2006, following an agreement in settlement of wage claims that were partly based increases in work value. Under the consent variation the wage rates were to be increased by 3.5% from the first full pay period commencing on or after each of 1 July 2006, 1 July 2007 and 1 July 2008. The wage increases were also to cover safety net increases, whether State or Federal, during the term of the award. Clause 22.3 of the award provided that:

“It is a term of this Award that the Union will not pursue any improvements in wages or conditions of employment, including any increases arising from the general increases given by the federal or state industrial tribunals, or the proposed Fair Pay Commission that arise during the term of this Award.”

The Catholic Commission for Employment Relations (“CCER”) represented a number of Catholic employers covered by the State award and supported the award variation.

Increases following the Work Choices Amendments

On the commencement of the *Work Choices* amendments on 27 March 2006, Notional Agreements Preserving State Awards (“NAPSAs”) were created to cover the employment of those previously covered by a State award, but thereafter covered by the WR Act. Various employers and employees previously covered by the NSW SACS Award became covered by one of these NAPSAs and, consequently by the SACS Pay Scale. The prospective pay increases in the NSW SACS Award were incorporated into the SACS Pay Scale by the terms of the WR Act. A Pay Scale summary for the SACS Pay Scale was subsequently published by the Department of Employment and Workplace Relations (AN120505-NSW).

The first pay increases under the SACS Pay Scale were payable from the first full pay period on or after 1 July 2006.

On 26 October 2006 the AFPC announced that, from 1 October 2006, wage rates of up to \$700 per week would be increased by \$27.36 per week and wage rates of \$700 per week or more would be increased by \$22.05 per week. The decision made no reference to the position of pay scales that were or would be otherwise increased, or to the question of the absorption of the increase granted by the AFPC by such other increases. The safety net increases granted by the AFPC therefore applied to the SACS Pay Scale.

The October 2006 decision meant that the SACS Pay Scale operated inconsistently with the State award from which it was derived and the terms of the underlying March 2006 agreement. It resulted in employers covered by the Federal legislation paying \$27.00 per week more than those bound by the State award from which it was derived.

The AFPC’s 2007 Decision

ACCER and other parties raised the issue of the SACS Pay Scale rates in their submissions to the AFPC’s 2007 wages review. In its written submissions to the AFPC ACCER asked that “the specific issue in the social and community services sector in New South Wales be addressed by the insertion of an absorption provision into the AFPC’s determination.” An absorption provision would mean that the AFPC increases would only apply to the extent that they exceed the agreed annual increases and would avoid the duplication of safety net increases.

In July 2007 the SACS Pay Scale rates were again adjusted by a further 3.5%, again by reason of the terms of the State award from which it was derived.

In its decision published in July 2007, the AFPC decided to exempt the SACS Pay Scale from the safety net pay increases otherwise available under that decision. The reasons for this decision are set out in the AFPC’s decision at pages 16-17 and 86-88. The increases

awarded to other employees were \$10.26 per week for those on weekly rates of up to \$699 and \$5.32 per week for those on higher weekly rates, both operative from 1 October 2007.

The Issues for 2008

In July 2008 the SACS Pay Scale will be adjusted by a further 3.5%, again by reason of the terms of the State award from which it was derived. This will be the last of the three increases granted by the variation to that award on 3 March 2006.

National Disability Services and Australian Business Industrial have submitted that no increases should be granted to the SACS Pay Scale in this year's review of wage rates.

ACCER supports the outcome proposed by National Disability Services and Australian Business Industrial. This position is consistent with the terms of the NSW SACS Award, from which the SACS Pay Scale was derived, and with the agreement made in March 2006 between the parties to that award. Furthermore, given the current and prospective disparity in rates between the State and Federal instruments, ACCER does not seek, as it did in 2007, the introduction of an absorption provision. ACCER notes, however, that 2008 is the last year in which these considerations will apply.