



Australian Fair Pay Commission

Wage-Setting Decision 3/2009

July 2009

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On 2 July 2009 we, Ian Harper (Chairman), and Hugh Armstrong, Patrick McClure, Mike O'Hagan, and Judith Sloan (Commissioners), collectively comprising the Australian Fair Pay Commission, acting pursuant to the powers conferred on the Australian Fair Pay Commission by sections 196, 200, 216, and 864 of the *Workplace Relations Act 1996* as continued in force by items 5 and 7 of Part 3 of Schedule 9 and item 6 of Part 1 of Schedule 2 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* make the following decision to be known as Australian Fair Pay Commission Wage-Setting Decision 3/2009.

Interpretation

In this Wage-Setting Decision:

"*special Federal Minimum Wage*" means a transitional special FMW as defined in item 5(3) of Division 1 of Part 3 of Schedule 9 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*;

"*Pay Scale*" or "*Australian Pay and Classification Scale*" means a transitional Pay Scale as defined in item 5(3) of Division 1 of Part 3 of Schedule 9 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*;

"*Supported Wage System*" means the Commonwealth Government System to promote employment for people who cannot work at full wages because of a disability, as documented in "Supported Wage System: Guidelines and Assessment Process".

Commencement of this Wage-Setting Decision

This Wage-Setting Decision comes into operation in relation to an employee at the commencement of the employee's first pay period on or after 1 August 2009.

Note: The reference to 'pay period' in the commencement provision is a reference to the pay period according to which the employee was being paid immediately before 1 August 2009.

A Supported Wage System Minimum Weekly Payment

A1 Adjustment to subsections 5.1 and 7.2 of New special Federal Minimum Wage No. 2

The *New special Federal Minimum Wage No. 2 – Employees with a disability 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 – and are not currently covered by a Pay Scale* is adjusted as follows:

(a) Subsection 5.1 is deleted and is replaced by the following:

5.1 The employee will be paid the amount worked out according to the following formula:

$$\$71 \div x$$

where x is the actual number of hours worked by the employee per week, or 38, whichever is the lesser.

(b) Subsection 7.2 is deleted and is replaced by the following:

7.2 The minimum hourly rate payable to the employee during the trial period shall be the greater of \$1.87 per hour or

$$\$71 \div x$$

where x is the actual number of hours worked by the employee per week, or 38, whichever is the lesser.

A2 Special Supported Wage System (Employees with a disability) Australian Pay and Classification Scale

Adjustment to sections 8 and 10 of the Special Supported Wage System (Employees with a disability) Australian Pay and Classification Scale

(1) The Special Supported Wage System (Employees with a disability) Australian Pay and Classification Scale, [2007] APCS 1 is adjusted as follows:

(a) Section 8 is deleted and is replaced by the following:

8. Minimum Rate Method

The employee will be paid the amount worked out according to the following formula:

$$\$71 \div x$$

where x is the actual number of hours worked by the employee per week, or 38, whichever is the lesser.

(b) Section 10 is deleted and is replaced by the following:

9. Trial Period

In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person for a trial period not exceeding an aggregate of 16 weeks in order to determine the appropriate percentage of assessed capacity.

The minimum hourly rate payable to the employee during the trial period shall be the greater of \$1.87 per hour or

$$\$71 \div x$$

where x is the actual number of hours worked by the employee per week, or 38, whichever is the lesser.

Work trials should include induction or training as appropriate to the job being trialled.

A3 Australian Pay and Classification Scales

Adjustment to preserved Pay Scales which specify a supported wage minimum weekly payment

- (1) Where the Supported Wage System is provided for in a Pay Scale, and the minimum amount payable under the Supported Wage System is also provided, that minimum amount is increased to $\$71 \div x$ per hour, where x is the actual number of hours worked by the employee per week, or 38, whichever is the lesser.

B Reasons for this Wage-Setting Decision

The Commission has decided to adjust the minimum weekly amount payable to employees with disability working under the Supported Wage System (SWS) to retain its nexus with the income test free threshold for the Disability Support Pension (DSP).

The Australian Council of Trade Unions (ACTU) and Australian Chamber of Commerce and Industry (ACCI) submissions to the 2009 general wage review recommended that that the minimum rate of the SWS should be adjusted to an amount equal to the per week equivalent of the income test free area of earnings for the DSP as it applies from 1 July 2009:

‘The ACTU seeks adjustment of the Supported Wage System minimum rate to an amount equal to the per week equivalent of the income test free area of earnings for the Disability Support Pension to apply from 1 July 2009.’¹

‘ACCI and the ACTU have for some years agreed to apply the income free threshold level for the Disability Support Pension as the minimum pay level for the operation of the Supported Wage System (SWS).

ACCI maintains this position, and does so notwithstanding of the primary outcome in this matter and the issue of whether there should be a general increase during 2009.’²

In Decision 3/2009 the Commission adjusts the minimum weekly amount payable to \$71 per week for employees with disability covered by the following instruments:

¹ ACTU, *Australian Council of Trade Unions Submission to the Australian Fair Pay Commission*, March 2009, p. 150, para. 13.9.

² ACCI, *2009 Minimum Wage Review, ACCI Submission*, March 2009, p. 9, para. 38.

- Special Supported Wage System (Employees with a disability) transitional Australian Pay and Classification Scale, [2007] APCS 1;
- Transitional special Federal Minimum Wage No 2 – Employees with a disability 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 – and are not currently covered by a Pay Scale; and
- Transitional Pay Scales which provide for the SWS and which also provide a minimum amount payable under the SWS.

On 2 July 2009 we, Ian Harper (Chairman), and Hugh Armstrong, Patrick McClure, Mike O'Hagan and Judith Sloan (Commissioners), collectively comprising the Australian Fair Pay Commission, make this decision to be known as Australian Fair Pay Commission Wage-Setting Decision 3/2009.

A handwritten signature in black ink that reads "Ian R. Harper." followed by a long horizontal flourish.

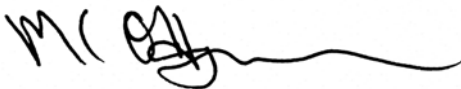
Ian R. Harper
Chairman

A handwritten signature in black ink that reads "Hugh Armstrong" in a cursive style.

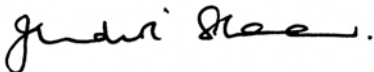
Hugh Armstrong
Commissioner

A handwritten signature in black ink that reads "Patrick McClure" with a horizontal flourish.

Patrick McClure, AO
Commissioner

A handwritten signature in black ink that reads "Mike O'Hagan" with a long, wavy horizontal flourish.

Mike O'Hagan
Commissioner

A handwritten signature in black ink that reads "Judith Sloan." in a cursive style.

Judith Sloan
Commissioner