



Australian Fair Pay Commission

Functions

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Table of Contents

Section 1.0	Legislative Framework	3
1.1	Establishment	3
1.2	Appointment of Commissioners	3
Section 2.0	Functions	3
2.1	Principal function	3
2.2	Wage-setting function	3
2.3	Wage-setting parameters	3
2.4	Wage reviews	4
2.5	Research and consultation	4
2.6	Wage-setting decisions	4
2.7	Australian Fair Pay and Conditions Standard – (the Standard)	5
2.8	Australian Pay and Classifications Scales – (Pay Scales)	5
2.9	Anti-discrimination considerations	5
Section 3.0	Operating principles	6
Section 4.0	Commission operation	6
4.1	Wage-setting	6
4.2	Procedures	6
4.3	Meetings	7
4.4	Annual Report	7

Section 1.0 Legislative Framework

1.1 Establishment

The Australian Fair Pay Commission (Commission) is established by s. 20 of the *Workplace Relations Act 1996* (WR Act) and consists of the Chair and four Commissioners. It is an independent body responsible for adjusting federal minimum and classification wages to promote the economic prosperity of the people of Australia.

1.2 Appointment of Commissioners

The Chair and Commissioners have been appointed by the Governor-General by written instrument. Each holds office on a part-time basis for the period specified in his or her instrument of appointment. The period must not exceed four years for the Commissioners and five years for the Chair.

Section 2.0 Functions

2.1 Principal function

The Commission's principal function (that is the principal activity of the Commission) is its wage-setting function: s. 21 (a) of the Act. Sections 21 (b) and (c) of the Act contemplate that legislation may confer other functions on the Commission. The Commission is also given the function of promoting public understanding of matters relevant to its wage-setting and other functions: s. 21 (d) of the WR Act. At this stage, no other functions have been conferred on the Commission under the WR Act or any other Act, including by any regulations.

2.2 Wage-setting function

The Commission's wage-setting function is, according to s. 22 (1) of the WR Act, to conduct wage reviews and exercise its wage-setting powers as necessary depending on the outcomes of wage reviews. The Commission's main wage-setting powers cover the following matters:

- adjusting the standard Federal Minimum Wage;
- adjusting special Federal Minimum Wages for employees with a disability;
- adjusting basic periodic rates of pay and basic piece rates of pay payable to employees or employees of particular classifications; and
- adjusting casual loadings.

2.3 Wage-setting parameters

The objective of the Commission in performing its wage-setting function is to promote the economic prosperity of the people of Australia: s. 23. In giving effect to this objective the Commission is required by s. 23 to have regard to:

- the capacity for the unemployed and low paid to obtain and remain in employment;
- employment and competitiveness across the economy;
- providing a safety net for the low paid; and
- providing minimum wages for junior employees, employees to whom training arrangements apply and employees with disabilities that ensure those employees are competitive in the labour market.

2.4 Wage reviews

Section 24 (1) of the WR Act authorises the Commission to determine:

- the timing and frequency of wage reviews;
- the scope of particular wage reviews;
- the manner in which wage reviews are to be conducted; and
- when wage-setting decisions are to come into effect.

The Commission has determined that it will conduct a review of federal minimum wages each year and announce its wage-setting decision in July of each year. The Commission has also determined that the implementation date will occur in October each year.

2.5 Research and consultation

For the purposes of performing its wage-setting function, the Commission is authorised, by s. 24 (2) of the WR Act to inform itself in any way it thinks appropriate, including by:

- undertaking or commissioning research; or
- consulting with any other person, body or organisation; or
- monitoring and evaluating the impact of its wage-setting decisions.

2.6 Wage-setting decisions

According to s. 24 (4) the Commission's wage-setting decisions must:

- be in writing; and
- be expressed as decisions of the Commission as a body; and
- include reasons for the decisions, expressed as reasons of the Commission as a body.

It follows that, when the Commission makes a decision, it must make a single decision and prepare a single set of reasons to which all members of the Commission subscribe: s. 24 (4). The decision cannot be expressed as a decision of the majority of the members of the Commission nor can a dissenting or minority decision be published.

Section 26 (1) directs the Commission to publish its wage-setting decisions, but s. 26 (3) outlines that this can be undertaken in any way the Commission thinks appropriate. Section 26 (2) authorises the Commission to publish other information about wages or its wage-setting function.

2.7 Australian Fair Pay and Conditions Standard – (Standard)

The Australian Fair Pay and Conditions Standard (Standard) is a set of statutory minimum employment conditions made up of the following entitlements:

- 38 hours per week maximum ordinary hours of work;
- four weeks annual leave;
- 10 days personal leave;
- 52 weeks parental leave; and
- basic rates of pay, determined by the standard FMW, special FMWs or Australian Pay and Classification Scales.

The Standard applies to all employees covered by the WR Act, except for those currently on a pre-WorkChoices employment agreement.¹ The Standard also sets the minimum criteria for new workplace agreements entered into after 27 March 2007.

2.8 Australian Pay and Classification Scales (Pay Scales)

The Commission is authorised to adjust (s. 216) Pay Scales. Pay Scales provide for specific minimum classifications and rates of pay, and have been derived from pre-reform federal and state awards or other industrial instruments.² The Commission has also determined a number of new Pay Scales for employees in the real estate sector and for employees with a disability.

When exercising its power to adjust Pay Scales, the Commission must have regard to the wage-setting parameters and comply with the legislative requirements of the WR Act including the following:

- no effective reduction below the 27 March 2006 rates: s. 190-192;
- minimum rates in Pay Scales are at least equal to any FMW which applies to the employee: s. 193 (1); and
- consideration of legislated anti-discrimination principles: s. 222.

2.9 Anti-discrimination considerations

Section 222 directs the Commission to consider, in exercising its wage-setting function, anti-discrimination considerations. When exercising its powers the Commission is directed to:

- apply the principle that men and women should receive equal remuneration for work of equal value; and
- have regard to the need to provide pro rata disability pay methods for employees with disabilities; and
- take account of the principles embodied in the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984*, the *Disability Discrimination Act 1992* and the *Age Discrimination Act 2004* relating to discrimination in relation to employment; and

¹ The Standard does not apply to an employee in relation to a matter if the employee's employment is subject to a pre-reform certified agreement, pre-reform AWA, preserved State agreement or section 170MX award that deals with that matter in relation to the employee.

² Pay Scales were also derived from various Federal and State laws that entitled employees to payment of a rate of pay or that were of a kind specified in regulations – sections 208-212 WR Act.

- take account of the principles embodied in the Family Responsibilities Convention, in particular those relating to:
 - preventing discrimination against workers who have family responsibilities; or
 - helping workers to reconcile their employment and family responsibilities; and
- ensure that its decisions do not contain provisions that discriminate because of, or for reasons including, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

For the purposes of the Acts referred to above, the Commission does not discriminate against an employee or employees by (in accordance with this Division) adjusting rate provisions in a pay scale that determine a basic periodic rate of pay, or by (in accordance with this Division) adjusting a special FMW, for:

- all junior employees, or a class of junior employees; or
- all employees with a disability, or a class of employees with a disability; or
- all employees to whom training arrangements apply, or a class of employees to whom training arrangements apply.

Section 3.0 Operating principles

The Commission's decisions will be based on the best available evidence and information, gathered through research, consultation and submissions from interested individuals and organisations.

Access to the Commission is facilitated through a range of strategies to enable provision of information and individual views.

The values of independence, openness, honesty, transparency and fairness will underpin the Commission's conduct.

Section 4.0 Commission operation

4.1 Wage-setting

For the purposes of exercising its wage-setting powers, s. 25 (1) of the Act requires that the Commission be constituted by the Commission Chair and four Commissioners. Section 25 (2) allows the Commission to be constituted by the Commission Chair and no fewer than two Commissioners if the Commission Chair considers it necessary in circumstances where Commissioners are unavailable. The Commission must be convened for the purpose of exercising its wage-setting powers.

4.2 Procedures

Section 24 (1) (c) authorises the Commission to determine "the manner in which wage reviews are to be conducted". Within the limits of its wage-setting function and subject to any regulations which have been made, the Commission is authorised by section 27 (1) to "determine the procedures it will use in performing its functions".

4.3 Meetings

In exercising the power conferred by s. 27 (1) of the WR Act, the Commission determines the following procedures that it will use in making decisions for the purpose of the performance of its functions.

- The quorum for the Commission, when exercising its wage-setting powers, is prescribed by s. 25 of the WR Act. The Commission must be constituted by the Commission Chair and the four Commissioners, unless the Commission Chair makes a determination under s. 25 (2) in circumstances where Commissioners are unavailable – in which case the Commission may be constituted by the Commission Chair and no fewer than two Commissioners.
- When the Commission is not exercising its wage-setting powers, the Commission may be constituted by the Commission Chair and no fewer than two Commissioners.
- The Commission will normally make its decisions, and can only make wage-setting decisions, at Commission meetings. Decisions will be made at those meetings by consensus.
- When the Commission is not exercising its wage-setting powers and the Commission Chair is of the opinion that there is a need for the Commission to decide a particular matter promptly, the Commission Chair may:
 - a) Convene a meeting of the Commission via telephone conference link-up. For the purpose of any such meeting, the Commission may be constituted by the Commission Chair and no fewer than two Commissioners; or
 - b) Direct that a proposed resolution be circulated amongst Commissioners who are to indicate their support for or opposition to the proposed resolution by entering a notation to that effect on the proposed resolution and returning the proposed resolution to the Commission Secretariat within 48 hours. The resolution will be taken as adopted by the Commission when three of the members of the Commission (whether the Commission Chair or a Commissioner) return the proposed resolution with a notation of their support.

4.4 Annual Report

An Annual Report must be prepared by the Commission as soon as practicable after the end of each financial year and provided to the Minister for presentation to the Parliament (s. 28).