

Section 5 5. Junior employees, employees to whom training arrangements apply and employees with a disability

5.1. Junior employees

Most submissions support a continuation of the approach taken by the Australian Fair Pay Commission (Commission) in its general Wage-Setting Decision 2007 to proportionately flow on the general increase to junior employees:

'...the current established practice for junior rates of pay strikes the correct balance when examining the level of productive work that a junior employee is able to undertake.'¹²⁹

'The ARA supports proportionate minimum wage structures for juniors¹³⁰ ... [and that] ... any increase be proportionately applied to subsidiary or derived rates consistent with established practice and pre WorkChoices award formulae.'¹³¹

'...ACCI calls on the AFPC to again ... proportionally flow on the general adult decision for Australian Pay and Classification Scales ... to junior rates in preserved Pay Scales'¹³²

'Ai Group submits that on this occasion, it is appropriate to continue the approach followed in the 2006 and 2007 Fair Pay Commission decisions. That is, by flowing on the general wage increase to juniors, apprentices and trainees in the same manner as has been done in the previous decisions ... "in ways that preserve existing relativities to the extent this is possible."¹³³

'The ACTU believes that the AFPC should adjust junior, trainee and apprentice rates as they were adjusted in the AFPC Decision 3 of 2007.'¹³⁴

'Although employment levels for young people are generally more sensitive to wage levels than for adults, there is no convincing evidence to indicate that the present minimum wage levels for young people have reduced their employment prospects relative to workers in other age groups.'¹³⁵

Australian Young Christian Workers submit that an increase to junior wages should be in line with the Consumer Price Index, because:

...a federal minimum wage that allows young people to obtain and retain good employment, and acknowledges their competency and a sustainable standard of living, must [also] ensure that young people remain competitive in the labour market.¹³⁶

Consistent with its previous approach, the Commission will flow on the general Wage-Setting Decision 2008 in relation to Australian Pay and Classification Scales (Pay Scales) to junior wages in Pay Scales. The general wage increase will be pro-rated on the basis of formulas applying in the relevant pre-Work Choices wage instruments.

¹²⁹ ARA, *Submission to the Australian Fair Pay Commission*, 14 March 2008, p. 20, para. 68.

¹³⁰ ARA, 2008, p. 20, para. 70.

¹³¹ ARA, 2008, p. 5, para. 14.

¹³² ACCI, *2008 Minimum Wage Review, ACCI Submission*, March 2008, p. 24, para. 1.117.

¹³³ Ai Group, *Australian Fair Pay Commission – 2008 Minimum Wage Review*, March 2008, p. 49, para. 161. Ai Group cites AFPC, *Wage-Setting Decisions and Reasons for Decisions*, Commonwealth of Australia, July 2007, p. 73.

¹³⁴ ACTU, *Australian Council of Trade Unions Submission to the Australian Fair Pay Commission*, March 2008, p. 133, para. 12.1.

¹³⁵ ACOSS, *Submission to the Fair Pay Commission on minimum wages*, March 2008, p. 49.

¹³⁶ Australian Young Christian Workers, *Federal Minimum Wage Review 2008, Submission by the Australian Young Christian Workers*, 14 March 2008, p. 8.

Section 5

In circumstances where there is no formula in the pre-Work Choices wage instrument, the general increase will be pro rated so that the junior rate retains its relativity to the relevant adult rate in the preserved Pay Scale. If no relevant rate is identified, the junior rate will be adjusted to retain its relativity to the lowest adult rate in the Pay Scale.

Trends in labour force participation of 15-20 year olds

Research commissioned in 2007 by the Commission and conducted by the Centre for Labour Market Research (CLMR)¹³⁷ examined the economic and social circumstances of young people aged 15–20 years. It found that the labour force participation rate of this age group is currently almost 60 per cent and has remained at around that level since the mid-1990s. Young women (61 per cent) have a higher labour force participation rate than young men (58 per cent), a reversal of the situation thirty years ago.¹³⁸ The employment-to-population ratio of 15-20 year olds is now 52 per cent (May 2007).¹³⁹

With a 20 per cent rise in the proportion of young people in full-time education over this time, young people are less likely overall to hold full-time jobs. Currently, around a third of employed teenagers are employed full-time while two-thirds are employed part-time. The labour force participation rate for full-time students has increased to 44 per cent from 29 per cent in 1986.¹⁴⁰

In both April 1986 and April 2007, around three-quarters of non full-time students held jobs, although there has been a decline in full-time employment among this group.¹⁴¹ Household, Income and Labour Dynamics in Australia (HILDA) survey data indicate that young people not in full-time education are significantly more likely than older workers to work non-standard hours and to be employed on a part-time or casual basis or through a labour hire firm. They are also less likely to be a member of a trade union.¹⁴²

Among 15–20 year olds, the unemployment rate is now around 12 per cent compared with 18 per cent in 1986.¹⁴³

Young people are disproportionately employed in a small number of industries. Retail trade and Accommodation, cafes and restaurants are the major industries employing young people, although a significant minority of young male workers are employed in Construction and Manufacturing.

5.2. Employees to whom training arrangements apply

In its general Wage-Setting Decision 2007, the Commission flowed on its general increase to employees to whom training arrangements apply. Most submissions support a continuation of the approach taken in that decision to proportionately flow on the general increase:

...ACCI calls on the AFPC to again include a proportionate flow on paragraph in its 2008 decision...¹⁴⁴

¹³⁷ P Flatau, M Dockery and T Stromback, *The Economic and Social Circumstances of Australian Young People Aged 15-20 Years*, Centre for Labour Market Research, report commissioned by AFPC, 2007.

¹³⁸ P Flatau et al, 2007, pp. 12-13.

¹³⁹ P Flatau et al, 2007, p. 14.

¹⁴⁰ P Flatau et al, 2007, p. 7.

¹⁴¹ P Flatau et al, 2007, p. 20.

¹⁴² P Flatau et al, 2007, p. 35.

¹⁴³ P Flatau et al, 2007, p. 70.

¹⁴⁴ ACCI, 2008, p. 25, para. 1.119.

Section 5

Although the Australian Council of Trade Unions (ACTU) believes that the Commission should adjust training rates in the manner employed in its general Wage-Setting Decision 2007,¹⁴⁵ it argues that current apprentice rates are unsatisfactory:

Minimum rates of pay for first year apprentices are below the poverty line and barely above the living standard of the unemployed.¹⁴⁶

Restaurant and Catering Australia submits that the Commission should examine other ways in which additional incentives can be applied to the employment of apprentices and trainees instead of increasing the minimum wage:

'The hospitality industry can not afford to have any form of disincentive attached to the employment of trainees and apprentices. The greatest disincentive to the engagement of trainees and apprentices would be to increase the minimum wage for these positions...the Fair Pay Commission should examine other ways in which additional incentives can be applied to the employment of apprentices and trainees. Approaches such as increasing employer incentives and/or setting reduced tax rates for apprentices/trainees could be ways in which an incentive could be offered to the trainees and the employer to further develop on the job training.'¹⁴⁷

'The restaurant, café and catering industry urges the AFPC to retain junior, trainee and apprentice rates at their current levels in order to ensure the retention of commitment to employment of these employee groups. Any reduction in the number of Trainees and Apprentices would have a significant impact on the industry's ability to overcome the chronic skills shortage it currently faces.'¹⁴⁸

A number of the issues raised such as additional incentives are outside the Commission's remit and are best raised with the Australian government and/or the Australian Industrial Relations Commission in award modernisation.

Consistent with its previous approach, the Commission will flow on general Wage-Setting Decision 2008 to employees to whom training arrangements apply.

The general wage increase will be pro rated on the basis of formulas applying in the relevant pre-Work Choices wage instruments, to maintain the relativity of the basic periodic rates of pay for apprentices with the relevant tradesperson rate.

Formulas, where available, will be used to adjust basic periodic rates of pay for full-time, part-time and school-based apprentices (noting that the Pay Scale derived from repealed s. 552 of the *Workplace Relations Amendment (Work Choices) Act 2005* retains a formula suitable to flow on the general minimum wage increase).

Where apprentice rates are derived from a specific rate in another Pay Scale, they will be adjusted to reflect the parent rate on which they are based, where the parent rates are adjusted to give effect to the general Wage-Setting Decision 2008.

Trainee basic periodic rates of pay in preserved Pay Scales will be adjusted to flow on the general Wage-Setting Decision 2008, using the method described in the transcript of the application to vary the National Training Wage Award 2000 for the 2003 Safety Net Review. This method is also adopted to flow on the general increase to related traineeships. Related traineeships include those with rates that were originally drawn from the National Training Wage Award prior to 27 March 2006.

¹⁴⁵ ACTU, 2008, p. 136, para. 12.6.

¹⁴⁶ ACTU, 2008, p. 13.

¹⁴⁷ Restaurant & Catering Australia, *Australian Fair Pay Commission Submission – R&CA 2008*, 2008, p. 15.

¹⁴⁸ Restaurant & Catering Australia, 2008, p. 13.

Section 5

5.3. Reviews of junior wage arrangements and wage arrangements for employees to whom training arrangements apply

In its general Wage-Setting Decision 2007, the Commission undertook to review wage arrangements for juniors and employees to whom training arrangements apply, in the context of a wider review of Pay Scales in the Australian labour market.

On 26 September 2007, the Commission announced its review of junior and trainee wages and sought submissions from interested parties. The Commission discontinued these reviews on 18 December 2007, at the request of the Australian Government, to avoid overlap and/or duplication with the award modernisation process.

The Commission also notes that, as a result of changes to its wage-setting functions arising from the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008*, it is no longer able to carry out wage reviews to examine gaps in statutory minimum wages for juniors and employees to whom training arrangements apply.

Nevertheless, some submissions discuss the role of junior wages:

'The rates of pay for junior employees reflect a careful balance between the rate of pay and the level of productive work that a junior employee is able to undertake. For some businesses in the restaurant and catering industries the decision to engage a junior to undertake specific tasks is the only option for that operation for cost reasons.'¹⁴⁹

'The minimum wage for all employees, junior or adult, should be the same. This would assist in limiting the selective employment of staff based upon their age. Many juniors complete the same tasks at works [sic] as those who are paid higher wages as adults.'¹⁵⁰

5.4. Employees with a disability

The Commission will flow on the general Wage-Setting Decision 2008 to disability wages in Pay Scales.

Gaps in coverage

In its general Wage-Setting Decision 2006, the Commission addressed gaps in the coverage of minimum rates of pay and access to pro rata arrangements for employees with a disability. The decision included the introduction of:

- a special Federal Minimum Wage (FMW) equal to the standard FMW for employees with a disability (as defined by the *Workplace Relations Act 2006*) who are in open employment and able to earn full adult wages, as the effects of their disability do not impair their productive capacity;
- a special Pay Scale that extended coverage of the Supported Wage System (SWS) pro rata wages to preserved Pay Scales that did not previously provide for pro rata wage arrangements;

¹⁴⁹ Restaurant & Catering Australia, 2008, p. 13.

¹⁵⁰ B Richards, *Submission to the Australian Fair Pay Commission*, March 2008.

Section 5

- a special FMW that extended coverage of the SWS pro rata wages to previously award free employees with a disability; and
- a special Pay Scale that provided pro rata wages to employees with a disability employed in the business services sector and who were not otherwise covered by preserved Pay Scales.

The instruments comprising the new special Pay Scales were consolidated in Wage-Setting Decision 8/2007, which determined the Special Business Services (Employees with a Disability) Australian Pay and Classification Scale, [2007] APCS 2 (Special Business Service Pay Scale) and the Special Supported Wage System (Employees with a Disability) Australian Pay and Classification Scale, [2007] APCS 1.

Submissions to the 2008 Minimum Wage Review were broadly supportive of the Commission's role in filling gaps in coverage of minimum wages for employees with a disability and its approach to flow on the general wage increase to pro rata wages for employees with a disability.

'Ai Group has not detected any difficulties with the wage structures established by the Fair Pay Commission for employees with a disability...Ai Group supports the minimum wage rates in the Preserved Pay Scales, in the two Special Pay Scales and in the two Special FMWs, being increased in proportion to any general increase awarded in the 2008 Minimum Wage Review.'¹⁵¹

'With regard to the 2007 Minimum Wage Decision, HREOC welcomed the decision by the AFPC to increase the Special Federal Minimum Wage (Special FMW) by the same amount as the standard Federal Minimum Wage (standard FMW) so that the two wages are equivalent. This decision acknowledges that people with disability are entitled to receive a wage commensurate with their experience, skills, training and qualifications and the equal contribution made by employees with disability to the Australian workforce.'¹⁵²

However, the Human Rights and Equal Opportunities Commission (HREOC) expresses concerns about both the unemployment rate for employees with a disability and earnings levels when they are employed:

Currently, Australians without disability are enjoying a record low unemployment rate of 4.3%... There is no evidence however that the current decrease in unemployment has flowed to people with disability...while people with disability represent a significant proportion of Australia's working age population, they participate in the workforce at lower rates, they are less likely to be employed when they do attempt to participate, and they will earn less if they do get a job...Women with disability are less likely to be in the workforce than men with disability.¹⁵³

Adjustment to minimum weekly payment

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

The Commission will adjust the minimum weekly amount payable to \$69 per week for employees with a disability covered by the following instruments:

¹⁵¹ Ai Group, 2008, p. 50, paras. 164-5.

¹⁵² HREOC, *Submission of the Human Rights and Equal Opportunity Commission to the Australian Fair Pay Commission for the 2008 Minimum Wage Review*, March 2008, p. 3, para. 8.

¹⁵³ HREOC, 2008, pp. 5-6, paras. 14-15, 20-21. HREOC cites ABS, *Labour Force, Australia, January 2008*, Catalogue No. 6202.0, 2007 and HREOC, *Employment and Disability – the Statistics*, Issues paper 1, (2005), <http://www.humanrights.gov.au/disability_rights/employment_inquiry/papers/issues1.htm>.

Section 5

- Special Supported Wage System (Employees with a disability) Australian Pay and Classification Scale, [2007] APCS 1;
- 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
- preserved Pay Scales which provide for the SWS and which also provide a minimum amount payable under the SWS.

Wage assessment tools in the business services sector

The Special Business Services Pay Scale provides pro rata minimum wages to employees with a disability employed in the business services sector who are not otherwise covered by a preserved Pay Scale.¹⁵⁴

The Special Business Services Pay Scale sets out a process for calculating pro rata minimum wages based on an employee's productive capacity, applying the following steps:

1. Upon appointment, the employer grades the employee at one of seven different grades, having regard to the employee's skills, experience and qualifications. The grading descriptions are set out in Schedule 4 of the Special Business Services Pay Scale.
2. The employee's capacity is assessed using a recognised wage assessment tool to determine the employee's capacity percentage.
3. The capacity percentage figure is applied to the rate of pay for the relevant grading (from step 1) in clause 6.4 of the Special Business Services Pay Scale.

This mechanism mirrors the minimum wage framework set out in the preserved Pay Scale derived from the Liquor, Hospitality and Miscellaneous Union Supported Employment Services Award 2005 (LHMU Award). Together, these instruments form a minimum wage framework for the majority of employees with a disability in business services.

Some employees with a disability employed in business services continue to be covered by preserved Pay Scales derived from Special Wage Permits issued by state industrial registrars prior to 26 March 2006. These preserved Pay Scales continue in effect after 27 March 2008. Employees who are covered by such instruments cannot be covered by the Special Business Services Pay Scale.¹⁵⁵

Prior to Wage-Setting Decision 1/2008, there were 22 wage assessment tools approved for use at step 2 of the process outlined above. Of these, five were limited to the employers who were using those tools on or before 27 June 2005.

The Commission exempted certain business services that were not using a recognised wage tool from the Special Business Services Pay Scale until 11 May 2008.¹⁵⁶

From 11 May 2008 these business services are required to ensure that they comply with the minimum rates of pay set out in the Special Business Services Pay Scale. The Department of Families, Housing, Community Services and Indigenous Affairs has

¹⁵⁴ Special Business Services (Employees with a disability) Australian Pay and Classification Scale, [2007] APCS 2, as determined by Australian Fair Pay Commission Wage-Setting Decision 8/2007.

¹⁵⁵ *Workplace Relations Act 1996 (Cth)*, s. 219A.

¹⁵⁶ Special Business Services (Employees with a disability) Australian Pay and Classification Scale, [2007] APCS 2, as determined by Australian Fair Pay Commission Wage-Setting Decision 8/2007, subsection 5(2).

Section 5

also advised the Commission that business services operating without a recognised wage assessment tool after 11 May 2008 will cease to qualify for Commonwealth Government funding.

In its general Wage-Setting Decision 2007, the Commission established a process for the approval of new wage assessment tools for inclusion in the Special Business Services Pay Scale. The Commission received proposals for ten new wage assessment tools and conducted a review of each of these tools.

During the course of consultations with the Commission and in submissions, some stakeholders expressed concern regarding the number of wage assessment tools available for use by business services and the potential for differing wage outcomes under different wage assessment tools.

HREOC is concerned that some wage assessment tools available to business services to assess productivity and determine wages may produce different wage outcomes for people performing the same work.¹⁵⁷

The National Council for Intellectual Disability has a strong view that the only appropriate wage assessment tools are the SWS or the Business Services Wage Assessment Tool (BSWAT):

It must be remembered that hundreds of companies (including some business services) pay their employees using the SWS which provides the highest wage outcome of all the assessment tools. These are 'real' businesses in the sense that they have to make a profit to survive, and yet they do not claim to be inviable [sic] as businesses due to the payment of wages using the SWS. The question must be asked...what is the difference between these businesses and those that are called business services?¹⁵⁸

In Wage-Setting Decision 1/2008, the Commission adjusted the Special Business Services Pay Scale to include nine new wage assessment tools. One of the wage assessment tools was limited for use to that business service only and approved for a 12 month period.

The preserved Pay Scale derived from the LHMU Award was also adjusted by Wage-Setting Decision 1/2008 to include the additional eight wage assessment tools which are available for general use.

Having established a comprehensive minimum wage framework, the Commission now has the opportunity to focus on monitoring and evaluating the process of gap filling in the business services sector. Some members of the Disability Roundtable (see Appendix B) have identified the:

...need for research into the consistency of pay scale classifications and wage assessments for workers with disability across the business services sector. Anecdotal evidence suggests that workers doing the same job, at the same level of productivity, are being classified differently, with the result that they are receiving quite varying wages.¹⁵⁹

Monitoring and evaluation of the introduction of the Special Business Services Pay Scale will be an area for research during 2008-09. The research will focus on wage outcomes under different wage assessment tools.

¹⁵⁷ HREOC, March 2008, p. 10, para. 44.

¹⁵⁸ M Pattison, National Council on Intellectual Disability, *E-mail to the Disability Round Table*, 28 April 2008.

¹⁵⁹ C. O'Neill, Australian Federation of Disability Organisations, *E-mail to the Disability Round Table*, 2 August 2007.