

## Section 8

**8. Preserved pay equity and work value wage increases under section 208(4)**

Section 208(3) of the *Workplace Relations Act 1996* (WR Act) prohibits a preserved Australian Pay and Classification Scale (Pay Scale) from including automatic pay increase mechanisms. However s. 208(4) provides an exception by preserving future pay increases in an instrument where these increases were 'wholly or partly on the ground of work value change or pay equity'.

Section 208(4) provides that if a Pay Scale contains work value change or pay equity increases determined by an industrial body that are to operate after 27 March 2006, then the preserved Pay Scale is taken to include these provisions that will operate at the specified future times.

A number of submissions seek an exemption from the Commission's general Wage-Setting Decision 2008 for the preserved Pay Scale derived from the Social and Community Services (State) Award [NSW] (SACS Pay Scale). This exemption is sought on the ground that the SACS Pay Scale retains an increase of 3.5 per cent which took effect on the first full pay period on or after 1 July 2008 as a result of the operation of s. 208(4).

Australian Business Industrial cites the conclusions of the NSW Industrial Relations Tribunal in the State Wage Case 2007 to support their view that the SACS Pay Scale should be exempt:

...the increases attributable to work value increases were based on work value changes which had taken place and demonstrated by evidence produced during proceedings. That is, the work value component of the phased increases is not attributable to future work value changes. Over the period of the phase-in the relative contribution of the safety net component could be expected to increase, or at its lowest, could not be expected to decrease over the period.<sup>186</sup>

National Disability Services restates its views put forward in its 2007 submission:

...the effect of the AFPC decision on the SACS preserved APCS is likely to lead to reduced employment in the sector, and a reduction in social and/or welfare programs in the community... We submit that the AFPC should adjust the SACS preserved APCS so that the AFPC decision does not apply in a way which goes beyond the contemplation of the parties and the Commission with respect to the SACS award.<sup>187</sup>

ACCER and the Aged Care Association also support this view.

ACCER supports the outcome proposed by National Disability Services and Australian Business Industrial.<sup>188</sup>

Jobs Australia submits that '[t]he reasons provided by the AFPC for the exemption of SACS (State) Award in decision 3/2007 remain relevant'.<sup>189</sup>

<sup>186</sup> Australian Business Industrial, *Minimum Wage Review 2008 – ABI Submission to the Australian Fair Pay Commission*, p. 28.

<sup>187</sup> National Disability Services, *National Disability Services Reasons for submission*, 12 January 2007, p. 7, paras. 26-32.

<sup>188</sup> ACCER, *2008 Minimum Wages Review and its effect on the preserved Pay Scale derived from the Social and Community Services Award*, letter dated 19 May 2008, p. 3.

<sup>189</sup> Jobs Australia, *2008 Minimum Wage Review and its effect on the preserved Pay Scale derived from the Social and Community Services Employees (State) Award*, letter dated 14 May 2008, p. 2, para. 5.

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Jobs Australia further submits that the objective should be to ensure that the intent of clause 22.3 of the SACS award be given effect. This can be achieved by excluding the SACS NAPSA pay scale from any further increases awarded by the AFPC until after July 2008, and that SACS Pay Scale rates be set at either the current rate including the December 2006 increase, or the rate arising from the relevant 3.5% increase in July 2007 or 2008, whichever is the greater.<sup>190</sup>

However, the Australian Services Union of New South Wales does not support the exemption:

We note that there are a number of other Notional Agreements Preserving State Awards which contain work value increases. All had increases in rates of pay applied to them as a result of your Decision No 3 of 2007; the only exception being the NSW Social and Community Services (State) Award (NAPSA)...Any decision to continue to exclude the NSW SACS Award (NAPSA) from future decisions will further entrench and compound the disadvantage caused as a result of your last decision.<sup>191</sup>

The Commission considers that, consistent with its view in 2007, it is not possible to identify the proportion of the relevant increase that is attributable to the separate elements of work value and safety net.

However, the Commission considers that there is scope to exempt the sector from the general Wage-Setting Decision 2008 without diminishing the effects of work value increases.

In coming to this view, the Commission notes that its general Wage-Setting Decision 2006 of \$27.36<sup>192</sup> applied to the SACS Pay Scale in full in addition to any preserved s. 208(4) increase. It also notes the prior agreement that the parties to the SACS Award seek no further increases other than those specified in the award<sup>193</sup> (3.5 per cent in 2006, 2007 and 2008).

To give effect to this intention, the Commission grants a partial exemption from the general Wage-Setting Decision 2008 for the SACS Pay Scale.

As the increase awarded by general Wage-Setting Decision 2008 will be greater than 3.5 per cent for some employees, some employees would be unfairly disadvantaged were the Commission to grant a full exemption.

Consistent with its decision in 2007, the Commission intends that the higher wage increase of either this general Wage-Setting Decision 2008, or any increase already received on 1 July 2008 as a result of the operation of s. 208(4), will apply.

<sup>190</sup> Jobs Australia, *Preserved Pay Scale derived from the Social and Community Services Employees (State) Award*, letter dated 15 May 2007, p. 2, para. 11.

<sup>191</sup> Australian Services Union of New South Wales, *2008 Minimum Wage Review and its effect on the preserved Pay Scale from the Social and Community Services Employees (State) Award*, letter dated 15 May 2008, p. 1.

<sup>192</sup> The general Wage-Setting Decision 2006 provided an hourly increase of \$0.72 to Pay Scales providing rates of pay up to and including \$18.42 per hour and an hourly increase of \$0.58 to Pay Scales providing weekly rates of pay above \$18.42 per hour.

<sup>193</sup> '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.' *Social and Community Services Employees (State) Award (NSW)*, s. 22.3.