



Australian Government

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# **Wages and Allowances**

## **Review**

**2007**

**Commonwealth Submission**

## **OVERVIEW**

1. The Australian Council of Trade Unions (ACTU), on behalf of member unions, currently has applications before the Australian Industrial Relations Commission (AIRC) to adjust wage rates and allowances in transitional awards and allowances in awards.
2. The applications seek to flow-on the recent decision of the Australian Fair Pay Commission to wage rates in transitional awards with a commensurate adjustment to allowances in both awards and transitional awards. The applications seek an operative date of 1 October 2007.
3. The Commonwealth encourages the AIRC to give effect to the flow-on of the Australian Fair Pay Commission's decision. The Commonwealth supports both the quantum of the flow-on and an operative date of 1 October 2007.
4. The Commonwealth also encourages the AIRC to grant farm businesses in receipt of an Exceptional Circumstances Interest Rate Subsidy (ECIRS) a deferral from the general minimum wage increase for those minimum wages above the Federal Minimum Wage. The AIRC should grant this exemption in the same manner as decided by the Australian Fair Pay Commission.

## **ADJUSTMENT OF WAGE RATES IN TRANSITIONAL AWARDS**

### **Introduction**

5. The Australian Fair Pay Commission has responsibility for conducting wage reviews and for setting and adjusting minimum and classification wages, predominantly for employees of constitutional corporations and employees of businesses in Victoria and the Territories (refer to s.5 and s.6 of the *Workplace Relations Act 1996* (WR Act)). The Australian Fair Pay Commission is the body primarily responsible for the fixation of minimum wages for employees covered by the federal workplace relations system.
6. However, the federal system maintains a transitional system for employers and their employees who were covered by federal awards on 26 March 2006 but who are otherwise not covered by s.5 and s.6 of the WR Act. These employees do not fall within the jurisdiction of the Australian Fair Pay Commission. Employees in this group are referred to as 'transitional employees', and will be covered by 'transitional awards' until 27 March 2011 unless their award ceases to be in force before that date.<sup>1</sup> This provides employers with the option to incorporate within five years. If they do not incorporate within that time, they will transfer into the relevant State system.
7. The AIRC has the responsibility to fix minimum wages for transitional employees.

### **AIRC to have regard to the Australian Fair Pay Commission's decisions**

8. When adjusting the minimum wages of transitional employees, the AIRC must have regard to the Australian Fair Pay Commission's decisions and the desirability of consistency with those decisions.
9. Clause 8 of Schedule 6 of the WR Act sets out these considerations as follows:

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<sup>1</sup> Clause 6 of Schedule 6 of the WR Act.

*“(1) The Commission must perform its functions under this Schedule in a way that furthers the objects of this Schedule.*

*(2) In performing its functions under this Schedule, the Commission must ensure that minimum safety net entitlements are maintained for wages and other specified monetary entitlements, having regard to:*

*(a) the desirability of high levels of productivity, low inflation, creation of jobs and high levels of employment; and*

*(b) the principle that the wages and other monetary entitlements of transitional employees should not place them at a disadvantage compared with the entitlements of employees (within the meaning of subsection 5(1)); and*

*(c) the principle that the costs to transitional employers of wages and other monetary entitlements should not place them at a competitive disadvantage in relation to employers (within the meaning of subsection 6(1)).*

*(3) In having regard to the factors referred to in paragraph (2)(a), the Commission must have regard to:*

*(a) wage-setting decisions of the AFPC; and*

*(b) in particular, any statements by the AFPC about the effect of wage increases on productivity, inflation and levels of employment.*

*(4) In performing its functions under this Schedule, the Commission must have regard to:*

*(a) the desirability of its decisions being consistent with wage-setting decisions of the AFPC; and*

*(b) the importance of providing minimum safety net entitlements that act as an incentive to bargaining at the workplace level.”*

10. In summary, the AIRC is obliged (among other things) to have regard to the principle that the wages of transitional employees should not place them at a disadvantage compared with employees within the rest of the federal system, and that the costs to transitional employers of wages should not place them at a disadvantage in relation to employers in the rest of the federal system.
11. The AIRC is also required to have regard to the wage-setting decisions of the Australian Fair Pay Commission and any relevant economic statements by that body.

## **AIRC WAGES AND ALLOWANCES REVIEW 2006 DECISION**

### **Introduction**

12. On 8 December 2006, the AIRC announced an increase of \$27.40 per week for the Federal Minimum Wage and minimum wage rates up to \$700 per week in transitional awards, and \$22.00 per week for minimum wage rates of \$700 per week and above for employees in the transitional system. These increases applied from 1 December 2006.<sup>2</sup>
13. The AIRC accepted the Australian Chamber of Commerce and Industry (ACCI) submission that there were a number of technical difficulties in the calculation of increases, particularly rounding issues. In its decision, the AIRC chose to round the increases in the Australian Fair Pay Commission's decision to the nearest ten cents.
14. The AIRC adjusted wage related allowances in transitional awards in accordance with the method referred to in the Statement of Principles and found in the *Furnishing and Glass Industries Allowance* decision.<sup>3</sup>
15. The Commonwealth supported the AIRC *Wages and Allowances Review 2006* decision as it was consistent with the relevant provisions in the WR Act, particularly, Clause 8 of Schedule 6 of the WR Act.

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<sup>2</sup> AIRC, *Wages and Allowances 2006 Decision*, October 2006, page 5 & 12.

<sup>3</sup> AIRC, *Wages and Allowances 2006 Decision*, October 2006, page 6.

## Australian Fair Pay Commission 2007 Decision

16. The Australian Fair Pay Commission handed down its 2007 Minimum Wage Review Decision on 5 July 2007. The Australian Fair Pay Commission announced an increase of:<sup>4</sup>
- \$10.26 per week (\$0.27 per hour) in the standard Federal Minimum Wage (FMW);
  - Approximately \$10.25 per week (\$0.27 per hour) in all adult<sup>5</sup> Pay Scales up to \$700<sup>6</sup> per week; and
  - Approximately \$5.30 per week (\$0.14 per hour) in all rates in Pay Scales above \$700<sup>7</sup> per week.
17. The increases flow-on to junior employees, employees to whom training arrangements apply, employees with a disability and piece workers.
18. The decision was reached unanimously by the five commissioners. It represents a balanced judgement with a clear focus on the Australian Fair Pay Commission's legislative parameters, as set out in s. 23 of the WR Act.
19. The decision takes into account: the requirement to provide a safety net for the low paid, and:
- The ten month period since the last pay increase for the standard FMW, special FMWs and the Australian Pay and Classification Scale (Pay Scale) reliant employees;
  - The sensitivity of low-paid employment to changes in wage levels, as well as the incentives for individuals to seek and remain in paid employment;

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<sup>4</sup> Australian Fair Pay Commission, Wage-Setting Decisions and Reasons for Decisions, July 2007.

<sup>5</sup> Where adult means a basic periodic rate of pay that does not explicitly apply to a class of employees with a disability or employees to whom a training arrangement applies or junior employees.

<sup>6</sup> The Commission's decision is required to be expressed in hourly rates of pay. Hourly rates of pay up to and including \$18.42 per hour increase by \$0.27 per hour. \$18.42 per hour x 38 hours equals \$699.96 per week.

<sup>7</sup> The Commission's decision is required to be expressed in hourly rates of pay. Hourly rates of pay over \$18.42 per hour increase by \$0.14 per hour. \$18.42 per hour x 38 hours equals \$699.96 per week.

- The fact that the economy and labour market have continued to perform strongly although not uniformly;
  - Movements in consumer prices; and
  - The requirement to provide a safety net for the low paid.
20. The Australian Fair Pay Commission made its decision informed by more than 62 submissions from organisations and individuals, detailed research conducted both by the Australian Fair Pay Commission Secretariat and by expert, external organisations and academic institutions.
21. In summary, the decision was reached after analysis and consideration of the best available evidence gathered through research, submissions and consultation.
22. In the Commonwealth's view, it is clearly open to the AIRC to adopt the Australian Fair Pay Commission's decision in the confident knowledge that, in doing so, it will fully satisfy the criteria that the AIRC is required to have regard to in Clause 8 of Schedule 6 of the WR Act.
23. The Commonwealth supports the flow-on of the Australian Fair Pay Commission's decision to the wage rates and allowances contained in transitional awards.

### **Monetary allowances in transitional awards**

24. Under the pre-reform WR Act, 'allowances' were generally allowable under paragraph 89A(2)(j). Particular award allowances that were held to be allowable included accident pay, meal allowance where an employee is required to work overtime without notification, first aid allowance, clothing and equipment allowances, travelling allowances where an employee is required to work late or early and the provision of transport by an employer.
25. The scope of what is allowable has been narrowed by the WorkChoices amendments to the WR Act. Paragraph 17(1)(j) of Schedule 6 makes allowable in transitional awards monetary allowances that provide for:

*(i) expenses incurred in the course of employment - for example, travel, accommodation, uniform, motor vehicle, meal or telephone expenses incurred in the course of employment;*

*(ii) responsibilities or skills that are not taken into account in rates of pay for employees – for example, a monetary allowance for the performance of additional duties at a higher level or for holding a particular qualification; or*

*(iii) disabilities associated with the performance of particular tasks (for example handling hazardous materials) or work in particular conditions (for example work in cold rooms) or locations (for example work in remote locations).*

26. Some matters previously categorised as allowances, such as accident make up pay and the provision of non-monetary allowances, are no longer allowable.
27. In the Commonwealth's view, the AIRC's 2006 Wages and Allowances Review was in accordance with its legislative parameters and the method of adjustment referred to in its Statement of Principles. The Commonwealth encourages the AIRC to adapt the same approach to its 2007 decision.

### **Operative date**

28. The Australian Fair Pay Commission determined that its decision will take effect on the first pay period on or after 1 October 2007. This provided a notice period of approximately twelve weeks from the day the Australian Fair Pay Commission announced its decision.
29. The ACTU is seeking an operative date of the first pay period on or after 1 October 2007 for each of its applications. The Commonwealth supports this operative date for the following reasons.
30. Firstly, it would be desirable if all businesses in the federal workplace relations system were to pay an increase from the same date.
31. Secondly, as employees within the rest of the federal system will be receiving an increase on the first pay period on or after 1 October 2007,

the Commonwealth supports the AIRC in handing down a decision as soon as possible so that transitional employees are not disadvantaged.

## **AUSTRALIAN FAIR PAY COMMISSION'S DECISION TO EXEMPT FARM BUSINESSES IN RECEIPT OF EXCEPTIONAL CIRCUMSTANCES INTEREST RATE SUBSIDY**

### **The exemption**

32. In its 2007 Minimum Wage Review decision, the Australian Fair Pay Commission granted a deferral of the 2007 minimum wage increase (for those minimum wages above the FMW) for a maximum of 12 months to those farm businesses in receipt of an Exceptional Circumstances Interest Rate Subsidy (ECIRS). The Australian Fair Pay Commission emphasised that its decision only defers the increase granted in the wage setting decision and that within 12 months all eligible businesses will be required to pay the 2007 increase in addition to any further increases subsequently awarded by the Australian Fair Pay Commission.<sup>8</sup> (See Attachment A for an Australian Fair Pay Commission fact sheet on the deferral of the 2007 minimum wage increase for ECIRS recipients)
33. In making its decision, the Australian Fair Pay Commission took into account:
- The fact that farm businesses in receipt of an ECIRS are those most severely affected by the drought and are most likely to suffer detriment from increases in labour costs at this time, resulting in job losses<sup>9</sup>;
  - Data supplied to the Australian Fair Pay Commission by the Australian Bureau of Agricultural and Resource Economics which predicted an average loss per farm for all broad-acre industries in 2006-07 to be \$59,800. This is the largest average loss in the history of the ABARE surveys, down from an average profit of \$8620 in 2005-06<sup>10</sup>; and

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<sup>8</sup> Australian Fair Pay Commission, Wage-Setting Decisions and Reasons for Decisions, July 2007, page 81.

<sup>9</sup> Ibid, page 15.

<sup>10</sup> Ibid, page 77.

- That the financial viability of farm enterprises is critical to sustaining jobs in the rural sector into the future. While there is considerable variability in agricultural employment from state to state, combined with projections of minimal growth over the next five years, the Australian Fair Pay Commission believes there is scope to provide further assistance to maintain jobs during this difficult period.<sup>11</sup>

34. In making its decision, the Australian Fair Pay Commission also cited statements made in submissions by key stakeholders within the agricultural industry<sup>12</sup>;

*“The capacity of the low paid and unemployed to obtain and remain in employment is highly dependant on the capacity of employers in the agricultural sector to generate employment. The worst drought in over a century, coupled with static or decreasing commodity prices and other costs of business mean that whilst the agricultural sector is the source of a significant amount of labour, particularly at the end of the low paid and for those returning to employment, many farmers do not have the capacity to pay increases such as that implemented following the AFPC’s inaugural wage-setting decision.” – National Farmers Federation Submission*

*“The ramifications of these conditions on the wine sector are immense, in terms of reductions in grape harvest tonnages, wine production and volume sales. These issues, when combined, impact on employment opportunities within the wine industry.”  
– South Australian Wine Industry Association*

35. The ACTU opposes the deferral granted to farm businesses in receipt of ECIRS.
36. The Commonwealth submits that the AIRC should adopt the Australian Fair Pay Commission decision to defer the 2007 minimum wage increases to farm business in receipt of ECIRS in the same manner as set out by the Australian Fair Pay Commission.

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<sup>11</sup> Ibid, page 81.

<sup>12</sup> Ibid, page 74.

37. The ACTU's proposal that the AIRC should not to follow the Australian Fair Pay Commission's decision to exempt eligible farm businesses would result in a two-tiered approach to Pay Scales in the industry, with unincorporated farm businesses potentially being put at a competitive disadvantage to those in the federal system. This would not be consistent with the AIRC's legislative parameters as set out in Clause 8 of Schedule 6 of the WR Act.
38. Such a decision would also be contrary to the ACTU's view that it is in the public interest that there be uniformity of wage entitlements for those persons undertaking the same or similar work.<sup>13</sup>

### **ANTI-DISCRIMINATION CONSIDERATIONS UNDER SECTION 222 OF THE WR Act**

39. The Australian Catholic Commission for Employment Relations (ACCER), submission claims that the Australian Fair Pay Commission's 2007 Minimum Wage Review decision was not consistent with the anti-discrimination provisions contained in section 222 of the WR Act and in particular the principles embodied in the Family Responsibilities Convention (the Convention) outlined in paragraph 222(1)(d) of the WR Act.
40. The Commonwealth submits that the Australian Fair Pay Commission took into proper account its responsibilities under section 222 of the Act including the convention in making its 2007 Minimum Wage Review decision (page 103 of Section 6 of the 2007 Minimum Wage Review Decision refers).

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<sup>13</sup> ACTU, *Wages and Allowance Review 2007*, Outline of Submission, 8 August 2007

## **Attachment A – Australian Fair Pay Commission fact sheet on the deferral of the 2007 minimum wage increase for ECIRS recipients**

### **Deferral for farm businesses most severely affected by drought**

The Australian Fair Pay Commission (Commission) has granted a deferral of Wage-Setting Decision 3/2007 for farm businesses most severely affected by drought.

The Commission has determined that farm businesses in receipt of an Exceptional Circumstances Interest Rate Subsidy (ECIRS) are most likely to suffer detriment from increases in labour costs at this time, resulting in job losses.

The deferral of Wage-Setting Decision 3/2007 applies for a maximum of 12 months or until a farm business ceases to qualify for ECIRS, whichever comes first.

Farm businesses that qualify for this deferral will be required to pay the 2007 increase within 12 months, in addition to any minimum wage increases subsequently awarded by the Commission.<sup>[1]</sup>

The granting of this deferral does not preclude these farm businesses from paying the 2007 minimum wage increase.

This deferral applies only to classification minimum wages above the standard Federal Minimum Wage. It does not apply to the standard Federal Minimum Wage itself.

Where a farm employee's wage would fall below the standard Federal Minimum Wage as a result of the deferral, then the deferral does not apply.

#### **Impact of the drought**

In seasonally adjusted terms, real agricultural income fell in the December quarter 2006 and the March quarter 2007, to levels not seen for more than 11 years.

The Australian Bureau of Agricultural and Resource Economics (ABARE) predicts the average cash income per farm for all broadacre industries will fall to its lowest level since the commencement of the surveys 29 years ago.

In 2006-07, the average loss per farm for all broadacre industries is expected to be \$59 800. This is the largest average loss in the history of the ABARE surveys.

The Commission's view is that the financial viability of farm businesses is critical to sustaining jobs in the rural sector into the future. The Commission recognises that even minor cost increases for farm businesses in Exceptional Circumstances areas currently in receipt of drought assistance may increase financial strain on these businesses resulting in job losses.

#### **Which farm businesses qualify for a deferral of Wage-Setting Decision 3/2007?**

Farm businesses eligible to defer Wage-Setting Decision 3/2007 must:

- **be in receipt of ECIRS;**
- **employ workers in an Exceptional Circumstances declared area**, as declared by the Federal Minister for Agriculture, Fisheries and Forestry; and
- **employ workers covered by the Pay Scales specified** at the end of this fact sheet [2]

- this deferral does not apply to employers and employees covered by transitional awards.

### **What is an Exceptional Circumstances declared area?**

An Exceptional Circumstances declared area is an area determined by the National Rural Advisory Council to be severely affected by circumstances that:

- are rare, that is must not have occurred more than once on average in every 20 to 25 years;
- have resulted in a rare and severe downturn in farm income over a prolonged period of time (for example, greater than 12 months);
- are not able to be planned for or managed as part of farmers' normal risk management strategies; and
- are a discrete event that is not part of long-term structural adjustment processes or of normal fluctuations in commodity prices.

Currently large areas of rural Australia have been declared Exceptional Circumstances areas due to severe drought conditions. For further information as to whether your area has been declared an Exceptional Circumstances area, visit the Department of Agriculture, Fisheries and Forestry website at [www.daff.gov.au](http://www.daff.gov.au).

### **What is an Exceptional Circumstances Interest Rate Subsidy (ECIRS)?**

When an area is declared an Exceptional Circumstances area, farm businesses and farm families within that area can apply for a range of economic support. One such benefit is an ECIRS. Not all farm businesses and farm families within an Exceptional Circumstances declared area are eligible for these benefits. Eligibility for this benefit varies from state to state, however in all cases financial hardship must be demonstrated through the provision of financial records to the state assessment authority.

### **What if an area ceases to an Exceptional Circumstances area?**

Once the area the farm business operates in ceases to be an Exceptional Circumstances declared area, employees of the farm business will become entitled to the wage rate increases awarded by Wage-Setting Decision 3/2007.

### **What if an employer ceases to be eligible for the Exceptional Circumstances Interest Rate Subsidy (ECIRS)?**

If a farm business ceases to be eligible for the ECIRS, employees of the farm business will become entitled to the wage rate increases awarded by Wage-Setting Decision 3/2007.

**When will employers eligible for the deferral be required to pass on the wage rate increase?**

The deferral of the general wage increase will be for a maximum period of 12 months from 1 October 2007 or until the farm business ceases to qualify for the ECIRS, whichever comes first. If a farm business ceases to be in receipt of the ECIRS it will no longer be exempt from paying the 2007 general wage increase and the business will be required to pass the increase on to its eligible employees from that point in time only.

This deferral applies only to classification minimum wages above the standard Federal Minimum Wage. It does not apply to the standard Federal Minimum Wage itself. The granting of this deferral does not preclude these individual farm businesses from paying the 2007 minimum wage increase.

**Need further information?**

If you would like more information on wage rates, call the **Workplace Infoline** on **1300 363 264**.

If you would like to view the Commission's decision in full, or check other fact sheets in this series, you can visit the **Australian Fair Pay Commission website** at [www.fairpay.gov.au](http://www.fairpay.gov.au).

**AUSTRALIAN PAY AND CLASSIFICATION SCALES ELIGIBLE FOR DEFERRAL****Federal**

The Australian Pay and Classification Scale derived from the:

- Pastoral Industry Award 1998 AP792378
- Horticultural AWU Award 2000, AP784867
- Woolclassers' Award 1999, AP802323.

**New South Wales**

The Australian Pay and Classification Scale derived from the:

- Cotton Growing (State) Employees Award, AN120161
- Dairying Industry Employees (State) Award, AN120176
- Horticultural (State) Award, AN120247
- Pastoral Industry (State) Award, AN120408
- Breeding and Raising of Pigs (State) Award, AN120084
- Horticultural (State) Award, AN120247
- Poultry Farms Employees (State) Award, AN120426

- Mushroom Industry Employees (State) Award, AN120357
- Consolidated Wine Industry (State) Award, AN120649.

### **South Australia**

The Australian Pay and Classification Scale derived from the:

- Pastoral Industry (SA) Award, AN150104.

### **Queensland**

The Australian Pay and Classification Scale derived from the:

- Cotton Harvesting Award – State 2003, AN140087
- Feedlot Industry Award- State 2006, AN140324
- Fruit and Vegetable Growing Industry Award – State 2002, AN140126
- Pig Breeding and Raising Award – State 2003, AN140210
- Poultry Farm and Hatchery Employees’ Award – State 2002, AN140216
- Station Hands Award –State 2003, AN140277
- Sugar Field Sector Award – State 2005, AN140282
- Shearing Industry Award –State 2003, AN140272
- Wool Classers and Wool Sorters (other than wool classers and wool sorters employed in shearing sheds) Award South Eastern Division -2003, AN140318.

### **Western Australia**

The Australian Pay and Classification Scale derived from the:

- Western Australia Shearing Contractors’ (AWU) Award 2002, AP816728
- Farm Employee’s Award 1985, AN160126.

### **Tasmania**

The Australian Pay and Classification Scale derived from the:

- Farming and Fruit Growing Award, AN170032.[3]

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[1] Wage-Setting Decision 4/2007 terminates the deferral decision.

[2] Wage-Setting Decision 2/2007 inserts a classification of Exceptional Circumstances Employees into specified Pay Scales.

[3] On 29 May 2007, an application was lodged to have areas within Tasmania declared Exceptional Circumstances Areas.