



**AUSTRALIAN INDUSTRIAL RELATIONS
COMMISSION**

2008 Wages and Allowances Review

ACCI

Outline of Submission

11 August 2008



LEADING AUSTRALIAN BUSINESS

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1. INTRODUCTION

1. In these proceedings the ACTU requests that the Australian Industrial Relations Commission (the Commission) flow on to transitional awards (and allowances in pre-reform awards) the decision of the Australian Fair Pay Commission (AFPC) that was announced on 8 July 2008. That decision provided for an increase of \$21.66 to all minimum wage rates, including the Federal Minimum Wage (an increase of \$0.57 per hour to all pay scale classifications).
2. The ACTU seeks the same quantum of increase to apply to employers subject to this decision as the AFPC increase; ACCI does not oppose this application, having regard to the statutory framework within which the Commission must consider applications to vary transitional awards.
3. The Australian Catholic Council for Employment Relations (ACCER) seeks that the AIRC would, for transitional employers subject to these proceedings, award an additional increase of \$9.30 per week to the Federal Minimum Wage. ACCI strongly opposes this submission and provides reasons in support of our opposition in Chapter 2.
4. A range of matters in relation to quantum, timing and the approach to be taken to the adjustment of transitional awards are no longer in dispute between the peak employer and trade union parties. As a result, this outline of submissions is relatively brief in comparison with that provided in previous matters, where substantial issues (such as in relation to the date of effect of increases) were in dispute between the ACTU and ACCI.

AFPC 2008 decision

5. ACCI provided a submission to the AFPC for consideration in their 2008 wage setting deliberations. That submission includes examination of the

current economic environment and the approach which ACCI considers appropriate in the present circumstances to wage setting¹

6. As neither the ACTU nor ACCI seeks that the Commission depart from the decision of the AFPC, ACCI does not directly refer in this submission to any of the economic material that was put before the AFPC. However if it does transpire that arguments regarding economic matters were to arise in these proceedings, ACCI relies on and would utilise the submissions made to the AFPC.

Operative Date

7. The ACTU seeks a date of effect for award variations in this matter from the first pay period on or after 1 October 2008. ACCI does not oppose this date of effect where applications are lodged and heard prior to this date, noting that it will have the effect of maintaining alignment with the date of effect of the AFPC increase applying to constitutional corporations.
8. Where applications to vary awards have not been filed by 1 October 2008, ACCI submits that dates of effect should not be retrospective, consistent the AIRC's Statement of Principles (Principle 8(a))². ACCI maintains this without prejudice to the rights of employers and employer organisations who are parties to awards and wish to argue for a prospective period of notice in relation to the variation of their particular awards.
9. In particular, ACCI does not accept the submissions of the ACTU that employers have had effective notice of the likely increase since 8 July 2008³. The AFPC decision has no direct effect in relation to these employers, and where they seek advice on this matter, they may be

¹ The ACCI submission is not attached due to its size but may be accessed at:
[http://www.acci.asn.au/text_files/submissions/2008/\(2008-03\)%20AFPC%20Subn%20%20-%20Final.pdf](http://www.acci.asn.au/text_files/submissions/2008/(2008-03)%20AFPC%20Subn%20%20-%20Final.pdf)

² Our submission in this respect is also supported by Clause 66(2) of Schedule 6 and ss. 551 and 572 of the WRA.

³ ACTU submission, p. 28

advised that the AFPC decision does not apply to them and that they are subject to separate proceedings before the AIRC (which are yet to be concluded). It is in our submission always appropriate to provide employers with reasonable notice of any change to their legal obligations arising from their specific award responsibility.

Deferral for rural employers in receipt of ECIRS

10. ACCI notes that one issue of contention between the ACTU and employer parties in the 2007 proceedings was the deferral of any increase in relation to employers receiving the Exceptional Circumstances Interest Rate Subsidy (ECIRS). It is acknowledged that the AFPC in its 2008 decision has declined to continue a deferral of wage increases for employers receiving ECIRS and that both the 2007 and 2008 wage increases will apply to previously-exempted rural employers subject to the AFPC decision from 1 October 2008.

Equivalent Weekly Rate Increase

11. ACCI acknowledges that the Commission in its 2007 decision adopted a method utilising rounding to 10 cent multiples⁴ and the ACTU seeks such an approach be adopted on this occasion. While reserving our right to make further submissions on this approach in any future proceedings, ACCI does not oppose this method being applied in this matter.

AFPC SWS Decision

12. The AFPC has in its decision increased the minimum amount payable in the SWS model clause to \$69 to maintain its equivalence to the Income Test Free Area for the Disability Support Pension. The ACTU seeks to apply this decision to the SWS minimum payment in transitional awards. ACCI supports the ACTU's application on this matter.

⁴ AIRCFB 684 (16 August 2007), paragraph 9

2. ACCER SUBMISSIONS

1. ACCI noted above that in this year's proceedings there are few issues of difference between the ACTU and ACCI in relation to matters such as quantum and the timing of increases. Other interveners such as the Australian Government in their submission appear to broadly adopt the approach advanced by the ACTU. It is therefore unnecessary for ACCI to make any additional submissions in relation to the ACTU applications or those who support them.
2. ACCER however has intervened and seeks a further increase (from the AFPC decision) of \$9.30 per week (being an overall increase to the Federal Minimum Wage of \$30.96). ACCI's submissions in this chapter address ACCER's submissions.

Onus

3. As a threshold issue ACCI continues to contend that there should be a strong onus in these proceedings in favour of the AIRC applying the AFPC's wages decision to transitional awards.
4. ACCI reiterates the submission put in previous years that a proper construction of the relevant provisions of the *Workplace Relations Act 1996* (WRA) should lead to a conclusion that there is a strong presumption that the AIRC should give effect to decisions of the AFPC⁵.
5. This means two things:
 - a. The onus is on those representative parties and interveners arguing to not give effect (or whose positions would ultimately be of that character) to provide the Commission with substantial reasons, to attempt to disturb the AFPC's reasons, conclusions and decisions.
 - b. Secondly, even if substantial reasons are provided, the Commission should exercise extreme caution and be reticent at not giving full effect to the AFPC's decision, as the Act mandates a presumption of

⁵ The AIRC's wage setting parameters are given by Schedule 6, Clause 8 of the WRA.

consistency between outcomes. Even where a substantial case is argued, a strong presumption in favour of giving effect to the AFPC's decisions would need to be overturned.

- c. A very high threshold must be met to rebut the presumption to giving effect to the AFPC's decisions, particularly considering the statutory considerations the AIRC must inform itself of when exercising its discretion to vary awards.

ACCER's submissions

6. It is ACCI's contention that ACCER have failed to provide sufficient reasons and evidence which would lead the Commission to agree to their contentions; furthermore their position is inconsistent with the statutory framework that governs the Commission's deliberations in these matters.
7. There are also compelling practical reasons why the Commission should not have regard to ACCER's position arising from the unique timing of this year's wage case.

Practicalities

8. ACCER's submission, if granted, would result in the following:
 - a. The wage adjustments to incorporated Federal system employers, directly regulated by the AFPC decision, remaining the same: a \$21.66 per week increase to all minimum rates of pay.
 - b. The Federal Minimum Wage adjustments of transitional (non-incorporated) employers who are currently within the Federal system would be increased by \$30.96, being therefore \$9.30 higher than the Federal Minimum Wage applying to their incorporated counterparts.
 - c. The classification structures of transitional employers bound by awards which utilise the Federal Minimum Wage in their classification structure would find their classification structures

subject to additional compression at the lower end (i.e. between the C14 and C13 rates of pay). The gap would narrow from a gap of \$16.60 to \$7.30. ACCER provide no material supporting such compression.

9. In ACCI's view it is undesirable, from a practical point of view, to introduce such complexities into the system. The effect of the ACCER submission being granted would be to introduce an additional complexity into the wage setting system: a differential minimum wage between incorporated and non-incorporated Federal system employers, and a more compressed classification structure for transitional awards as opposed to pay scales applying to Federal system incorporated employers. Any party or intervener seeking such complexity would have to provide compelling evidence to the Commission before such a departure would be justified.

AFPC Decision on Tiering

10. The AFPC in this year's decision departed from its previous practice of providing a tiered increase to wage rates. In doing so, the AFPC had regard to the award modernisation process currently being undertaken by the AIRC:

"The Commission recognises that continuing to award differential increases could overlap, duplicate or even conflict with the award modernisation process being conducted by the Australian Industrial Relations Commission (AIRC). In 2007, the Commission commenced a review of Pay Scales. The Commission discontinued this review in December 2007 following a request from the Australian Government which highlighted the new remit given to the AIRC to undertake award modernisation.

The Commission considers that issues raised in submissions regarding a differential increase are therefore best considered by the AIRC through the award modernisation process."⁶

⁶ AFPC 2008 Wage Setting Decision, p. 91

11. ACCI submits that these considerations are germane to the AIRC's consideration of the ACCER submission in this matter. Granting the ACCER submission would result in a differential increase at a particular point within classification structures (as discussed above) which is effectively a form of tiering.
12. The award modernisation process is directed at the creation of new classification structures for more broadly applying, modern awards. It is not possible, at this time, to anticipate what may result from these processes, as the process of award modernisation is currently ongoing. The process of review does however provide a strong argument (additional to other arguments) in favour of retaining an approach which does not alter relativities and differentials at this time.

Re-opening the AFPC minimum wage review

13. ACCER acknowledges at paragraph 6 of its submission that these AIRC proceedings cannot constitute an 'appeal' against the decision of the AFPC. However it then goes on, in our view, to do exactly that. The majority of ACCER's submission is an analysis of the AFPC's application of the Henderson Poverty Line. ACCER then reach the conclusion that the AFPC has misapplied this poverty measure; as a consequence the AIRC should award an increase in addition to that granted by the AFPC.
14. ACCI considers ACCER's submissions deficient in the following respects:
 - a. ACCER has failed to consider or address the statutory considerations which guide the AFPC.
 - b. It has, more importantly for these matters, failed entirely to consider the statutory considerations which guide the Commission's wage determination function in the present context, and its consideration of the AFPC decision.

The wage setting parameters of the AFPC

15. The AFPC's wage setting parameters are given in s 23 of the WRA. They include:

- a. The capacity of the unemployed and low paid to obtain and remain in employment.
 - b. Employment and competitiveness across the economy.
 - c. Providing a safety net for the low paid.
 - d. 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.
16. It is clear from these statutory criteria that the AFPC must have regard to and balance a range of very broad considerations in reaching conclusions about the appropriateness of increasing minimum wages, and the quantum of any increase to be granted.
17. While the AFPC has provided reasons for its decision, and in its decision has provided information of its view of current economic and social circumstances relevant to its present role, it is also clear that it has to make an overall judgement based on these criteria.
18. ACCER's submission amounts to an analysis of a very narrow component of the total range of matters to which the AFPC has regard:
- a. Even if ACCER's analysis was accepted was correct, ACCER cannot tell us what weight the AFPC gave to these matters as part of the overall judgement it formed of the full range of statutory considerations it must have regard to in its submission, which is much broader than merely a consideration of the needs of the low paid.
 - b. Even if ACCER was correct in its analysis of the very small number of measures it focuses on, ACCER does not provide evidence to establish that its submission for an increase to the Federal Minimum Wage would be consistent with the overall set of wage setting parameters of the AFPC.

19. That is, ACCER has provided some information relevant to s 23(c), but nothing in relation to sections 23 (a) and (b). It would be at a minimum necessary for any party or intervener in these proceedings seeking to depart from the AFPC decision to provide evidence and submissions on the full range of matters to which the AFPC has regard; ACCER has failed to do so.
20. ACCI accepts that ACCER believes it appropriate that the AFPC awarded a higher wage increase at the level of the Federal Minimum Wage. All stakeholders will have their view on how appropriately any particular AFPC decision balances the wage setting parameters of s 23 and whether the increase granted is appropriate.
21. ACCI has its view on the 2008 AFPC decision. Our submission to the AFPC decision provides information on the approach ACCI submitted the AFPC should take to this year's wages review. ACCI considers that the economy is very evenly poised and subject to great uncertainty at present. The current economic environment requires great caution in respect of any adjustment to minimum wages⁷.
22. ACCI, ACCER and other parties however had an opportunity to make submissions and provide evidence to the AFPC for their 2008 minimum wage review. The mere fact that ACCER, or any other party, does not think that the AFPC may have 'got it right' in regard to their full range of wage setting parameters does not however provide a basis for those matters to be re-argued in the current AIRC proceedings, and doing so would create a series of practical difficulties in the national economy that we have identified above.

AIRC Statutory Considerations

23. ACCER in their submissions state that the statutory considerations that currently guide the AIRC in setting minimum wages for transitional

⁷ [http://www.acci.asn.au/text_files/submissions/2008/\(2008-03\)%20AFPC%20Subn%20%20-%20Final.pdf](http://www.acci.asn.au/text_files/submissions/2008/(2008-03)%20AFPC%20Subn%20%20-%20Final.pdf)
: Chapter 3

- Federal system employers cannot ‘mandate’ that decisions of the AIRC be adopted⁸. That may be true; ACCER however have no regard to and failed to provide submissions demonstrating how their application for an increase to the Federal Minimum Wage would be consistent with the statutory considerations that do guide the Commission.
24. In that regard, ACCI also believe that the conclusions reached by the Full Bench in last year’s proceedings concerning ACCER’s application for an upwards adjustment to the Federal Minimum Wage remain apposite⁹.
25. The statutory considerations which guide the Commission are given in Clause 8 of Schedule 6 of the WRA. They include:
- a. *Having regard to decisions of the AFPC and the statements of the AFPC about the effect of wages on productivity, inflation and levels of employment.* ACCI has provided submissions in previous flow-on matters, and continues to advance the submission that must result in a presumption that the AIRC would apply AFPC decisions in the absence of parties bringing compelling evidence to depart from the AFPC’s decision, which has not been done.
 - b. *The desirability of high levels of productivity, low inflation, creation of jobs and high levels of employment.* It is ACCI’s submission that any party or intervener seeking a departure from the AFPC decision would need to address the Commission on these matters and provide evidence in relation to them. ACCER have failed to provide any information on these matters. In the absence of any further information, ACCI submits that there is no basis to disturb the AFPC decision.
 - c. *The principle that the wages and other monetary entitlements of transitional employers should not place them at a disadvantage compared with the entitlements of employees (of corporations).* ACCI submits that

⁸ ACCER submission, paragraph 6

⁹ AIRCFB 684 (16 August 2007), paragraph 8

a non-differential decision (i.e. applying the decision of the AFPC) provides the best approach to meeting this statutory criterion.

- d. *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.* ACCER have made no attempt to provide information in relation to this statutory criterion.

26. ACCI notes that the ACTU acknowledge that there is little information regarding who exactly is subject to flow-on applications¹⁰, and ACCI contends that the characterisations, capacities and economic circumstances of the businesses subject to this application would need to be considered for the Commission to consider granting the increase sought by ACCER.
27. That said, the granting of the ACCER submission would increase the labour costs of transitional employers applying the Federal Minimum Wage; as such it would be inconsistent with Clause 8(2)(c) of Schedule 6 of the WRA. On this basis alone, and the lack of evidence provided by ACCER on this matter, their application should be rejected.

Quantum sought by ACCER

28. ACCER seeks an increase to the Federal Minimum Wage of \$30.96. Having regard to the full range of economic circumstances described in ACCI's submission to the AFPC submission¹¹, it is ACCI's view that such an increase would be excessive in the present economic circumstances. Such a significant increase to the Federal Minimum Wage is not warranted in the present climate.

¹⁰ ACTU submission, p. 23

¹¹ [http://www.acci.asn.au/text_files/submissions/2008/\(2008-03\)%20AFPC%20Subn%20%20-%20Final.pdf](http://www.acci.asn.au/text_files/submissions/2008/(2008-03)%20AFPC%20Subn%20%20-%20Final.pdf); in particular Chapter 3 of the ACCI submission which addresses emerging economic risk.