
Australian Council of Trade Unions Outline of Submission to the Australian Industrial Relations Commission

Wages and Allowances Review 2008

6 August 2008

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Introduction

- 1.1 There are 24 applications before the Australian Industrial Relations Commission (AIRC) to vary rates of pay and monetary allowances contained within Transitional Awards and monetary allowances contained within Pre reform Awards in accordance with the Commission's usual principles for the adjustment of allowances.
- 1.2 These applications follow the decision of the Australian Fair Pay Commission (AFPC) to adjust minimum rates within pay and classification scales from the first full pay period to commence on or after 1 October 2008. This decision was made on 16 June 2008 and announced on 8 July 2008.
- 1.3 The applications seek that the AIRC adopt the decision of the AFPC.
- 1.4 The ACTU and Union claims are consistent with the Act and are economically responsible and affordable.
- 1.5 It is a matter of industrial equity that there be, insofar as is possible, uniformity of remuneration for work of a similar or the same nature.
- 1.6 The ACTU argues that it is appropriate that the AIRC continue to apply, where not barred by statute, the AIRC Statement of Principles.¹

¹ AIRC PR002005, Attachment A

Nature of these submissions

- 2.1 These brief submissions will be expanded upon, where appropriate, at hearing. The ACTU will also take the opportunity at hearing to reply to the respondents' outline of submissions and any submissions they put on the day.

What the applicants are seeking to vary

- 3.1 The ACTU is seeking to flow-on the 2008 Wage-Setting decision of the AFPC which comes into effect from the first pay period on or after 1 October 2008. This is a period of 12 months after the operative date of the AFPC 2007 decision.
- 3.2 The applications before the AIRC reflect the AFPC decision to increase all rates of pay by (a rounded) \$21.70 per week with commensurate increases in wage related allowances. The applications also seek to adjust reimbursement and other allowances in accordance with previously agreed or arbitrated formulas.
- 3.3 On 8 July 2008 the AFPC announced its 2008 Wage-Setting Decision No 2/2008. In that decision the AFPC increased:
- the Federal Minimum Wage by \$0.57 per hour from \$13.74 to \$14.31;
 - preserved pay scales \$0.57 per hour.
- 3.4 In its Executive Summary the AFPC indicated that the effect of its decision was to increase:
- the Federal Minimum Wage by \$21.66 per week to a weekly rate of \$543.78;
 - all adult pay scales by \$21.66 per week²

² Australian Fair Pay Commission Wage-Setting Decision and Reasons for Decision July 2008 p8

3.5 The ACTU welcomes the decision of the AFPC to adjust all pay scales by the one level of increase.

3.6 The ACTU requests that the AIRC round to the nearest 10 cents the weekly increase, as has been the custom in this Commission. The AIRC in its decision PR002006 stated:

In this respect we have used as a base the weekly rates which the AFPC itself has indicated should be applied then rounded those figures to the nearest 10 cents.³

3.7 The Commission also modified the AFPC 2007 decision by rounding to the nearest 10 cents.⁴

3.8 Under the Workplace Relations Act (WRA), the AIRC retains the power to vary Transitional Awards. Unions have made applications to vary the rates of pay and monetary allowances contained within Transitional Awards in accordance with clause 29 of Schedule 6 of the WRA.

3.9 The AIRC also retains the power to vary allowances in Pre-reform Awards. Unions have also made application to vary monetary allowances contained within Pre reform Awards in accordance with Part 10, Division 5, clause 553 of the WRA.

3.10 Insofar as they are capable of being applied the Wage Fixing Principles previously established by the AIRC should continue to apply.

3.11 The AFPC decision provides for commensurate increases for juniors, trainees, casuals and piece rates workers. The ACTU requests that the AIRC reflects this flow-on to these categories of workers.

3.12 The AFPC decision notes that the deferment of the 2007 increase for “Exceptional Circumstances Employees” – employees employed by farm businesses granted

³ Australian Industrial Relations Commission Decision PR002006, p17

⁴ Aust. Australian Industrial Relations Commission [2007] AIRCFB 684, 16 August 2007, paragraph 9

Exceptional Circumstances Interest Rate Subsidy ceases to have effect from 1 October 2008. This means that these employees will receive the 2007 and 2008 increases on and from the first pay period after 1 October 2008. The ACTU request that the AIRC reflect this part of the AFPC decision.

- 3.13 The AFPC decision 2/2008 also increased to \$69 per week the minimum weekly amount payable under Pay Scales or instruments which give effect to the Supported Wage System. The decision takes effect from the first pay period on or after 1 October 2008. The ACTU requests that the AIRC consider increasing the minimum amount payable under the SWS model clause in Transitional Awards to \$69 per week.

Proposed Process

- 3.14 Under the auspices of the ACTU a number of affiliates to the ACTU have made application to vary their respective awards.
- 3.15 Following a decision of the AIRC in this matter the ACTU proposes that subsequent applications be directed to the appropriate Panel member, who in dealing with those applications would have reference to the Full Bench decision.
- 3.16 The ACTU also seeks that in the absence of any objection and subject to the necessary service requirements, applications reflecting the decision of the Full Bench of the Commission be processed on the papers. This is consistent with the Commission decision of 2007:

[26] ... On a more general note, where applications are made to implement this decision there is scope for the Commission to make orders in the absence of the parties where the order proposed by the applicant is not opposed by the other parties. It is not appropriate that this Full Bench mandate a particular method of dealing with applications in those

circumstances. Where the parties agree, however, the Commission will attempt to facilitate settlement of orders without the need for parties to attend a hearing.⁵

3.17 The ACTU requests that the Commission confirm this approach that, where there is agreement, there is scope for the Commission to make orders on the papers:

⁵ op cit. paragraph 26

Adjusted Pay Scales

4.1 The ACTU is seeking a (rounded) adjustment to rates of pay contained in Transitional Awards consistent with the decision of the AFPC. For illustrative purposes Table 4.1 reflects the Metal, Engineering and Associated Industries Award 1998 [Transitional] rates prior to and after adjustment. The weekly rates in this table have been adjusted consistent with the approach adopted by the AIRC in PR002006 and PR002007.

Table 4.1: The ACTU Wage Claim

Classification	Weekly Rate	Hourly Rate	New Weekly Rate Sought	New Hourly Rate Sought
C14	522.20	13.74	543.90	14.31
C13	538.80	14.18	560.50	14.75
C12	561.30	14.77	583.00	15.34
C11	582.20	15.32	603.90	15.89
C10	615.90	16.21	637.60	16.78
C9	636.80	16.76	658.50	17.33
C8	657.60	17.31	679.30	17.88
C7	676.50	17.8	698.20	18.37
C6	713.20	18.77	734.90	19.34
C5	728.70	19.18	750.40	19.75
C4	749.50	19.72	771.20	20.29
C3	791.20	20.82	812.90	21.39
C2(a)	812.10	21.37	833.80	21.94
C2(b)	849.80	22.36	871.50	22.93
C1(a)	933.30	24.56	955.00	25.13
C1(b)	1058.40	27.85	1080.10	28.42

Consideration by AIRC of AFPC decision

5.1 In its 2007 decision PR002007 the AIRC stated:

[2] The July 2007 decision is the AFPC's second wage-setting decision. The AFPC's first wage-setting decision was made on 26 October 2006. Applications for the flow-on of that decision to federal awards were determined principally in the Wages and Allowances Review 2006 decision. In that decision the Commission dealt with the relevant legislative provisions and some of the fundamental changes to the award system arising from the Workplace Relations Amendment (Work Choices) Act 2005. This decision, to be known as the Wages and Allowances Review 2007 decision, is based on the same statutory provisions. It follows that a number of issues decided in the Wages and Allowances Review 2006 decision are also relevant to this decision. Although it is not necessary to set them out, we note that the main statutory provisions governing the exercise of the Commission's powers to vary transitional awards and pre-reform awards are cl.8 of Schedule 6 to the Workplace Relations Act 1996 (the Act) and ss.510 and 511 of the Act.⁶

5.2 The ACTU does not argue that the AIRC is required to follow the decisions of the AFPC, only that the AIRC take these decisions into account. The matters dealt with within sub clause 8(2)(a) of Schedule 6 have been the subject of extensive submissions to the AFPC by the ACTU and other parties. On this occasion the AIRC can be informed by the decision of the AFPC on these matters.

⁶ *ibid.*

5.3 The ACTU believes that it is in the public interest and consistent with the objects of the Act that on this occasion the AIRC consider and adopt the June 16 2008 decision of the AFPC.

ACTU Submissions to the AFPC

5.4 The ACTU submissions to the AFPC are attached to these submissions as Annexure A.

5.5 The ACTU relies on these submissions in these matters. Some economic data is updated in the following sections of this submission. The ACTU submissions to the AFPC are relevant although in some instances the ACTU submission refers to data relating to employees employed by incorporated bodies.

Decision of the AFPC

5.6 In its Reasons for Decision the AFPC found:

- To date, strong growth in the economy has delivered solid employment outcomes to a broad cross section of the working-age population. Unemployment has continued to decline for most groups, including those identified as more disadvantaged in the labour market.⁷
- While growth in aggregate levels of unskilled labour appears to be steady, employment outcomes for a range of lower-skilled demographic groups have improved over the past few years. Unemployment rates have continued to decline for many of these demographic groups.⁸
- While there is evidence of upward earnings mobility for both unemployed people and low-paid employees, a sizeable proportion of low-paid employees is likely to 'churn' between low-paid jobs and unemployment, or out of the labour force, or remain in low-paid employment over time.⁹

⁷ *ibid.*, p39

⁸ *ibid.*, p42

⁹ *ibid.*, p44

- In considering the capacity of unemployed and low-paid people to obtain and remain in employment, the Commission notes the effect of minimum wages on labour supply. It is important that unemployed people have adequate incentives to take up low-paid work and that people in low-paid work are encouraged to maintain their employment.¹⁰
- The labour market performed solidly over the year to May 2008 ... :
 - total employment increased by 2.2 per cent, with full-time and part-time employment increasing by 1.6 per cent and 3.7 per cent, respectively;
 - the participation rate increased slightly, to 65.2 per cent of the working-age population;
 - the employment-to-population ratio increased by 0.3 percentage points; and
 - the unemployment rate remained at 4.3 per cent.
- Unemployment fell in most states and territories, with the exception of Queensland and Western Australia which already had comparatively low unemployment rates, and South Australia.
- The improvement in labour market performance has been relatively uniform throughout Australia's regions, with the majority of small area labour markets recording unemployment rates below 5 per cent.¹¹
- Broader measures of labour underutilisation also point to an improvement in labour market performance. One such estimate declined from 9.9 per cent in late 2004 to 7.9 per cent in early 2008.¹²
- In the short-term, the level of demand for labour remains high, as reflected in job vacancy rates across a broad range of occupations and skill levels. Businesses have indicated that the availability of labour is one of the more significant constraints they face.¹³

¹⁰ *ibid.*, p46

¹¹ *ibid.*

¹² *ibid.*

¹³ *ibid.*, p48

- The WPI increased by 4.1 per cent over the year to March 2008, similar to the annual rates recorded over the previous two years. Higher wage growth appears to have been contained to those segments of the economy with skill shortages or already low unemployment rates.
- Wage growth in collective agreements reached in each quarter over the past three years has been steady.¹⁴
- Aggregate profit remained solid in recent years:
 - the profit share of total factor income rose to a historic high of 27 per cent in March 2008;
 - company gross operating profit increased by 7 per cent over the year to March 2008; and
 - gross profit margins on sales increased steadily over the five years to 2005-06, with average margins for all industries during this period between 8 and 11 per cent.
- Business surveys and submissions from employer groups suggest that business profitability has declined recently. On the available data, any such decline would be occurring from what appear to be relatively high rates of profitability in most industries on average.¹⁵
- Industries with the largest proportion of Pay Scale reliant employees (Pay Scale reliant industries) performed generally well in 2007. Output and employment in these industries appear to have grown at a steady rate relative to other industries since 2003.¹⁶
- Econtech forecasts that conditions in industries most affected by the Commission's decisions will be moderate in 2008-09.¹⁷
- The direct effect of a moderate increase in minimum wages on aggregate inflation is likely to be minor. Wages paid to employees who are directly reliant on the Commission's decision comprise only a small percentage of the economy's total wage bill.¹⁸

¹⁴ *ibid.*

¹⁵ *ibid.*, p49

¹⁶ *ibid.*

¹⁷ *ibid.*, p50

¹⁸ *ibid.*, p52

- There can also be indirect effects from minimum wage adjustments, as they flow on (in one form or another) from minimum wage decisions to wages set under other instruments. However, the available evidence on the size of these effects is limited.¹⁹
- Given the increased flexibility of the labour market and the diversity of wage setting arrangements, the effect of changes in minimum wages on aggregate wages, prices and employment is somewhat less than it has been historically. However, the current economic environment highlights the importance of measured adjustments to policy settings, including minimum wages. A number of government submissions argue for an increase in minimum wages that is sustainable and predictable. Such an approach to the adjustment of minimum wages can help to anchor expectations and act as a stabilising influence, both in dampening overly large variations in the economy and addressing a period of increased uncertainty.
- On balance, the Commission believes that its general Wage-Setting Decision 2008 to increase minimum wages by \$21.66 per week will have only a minor impact upon aggregate wage and inflation outcomes in the economy as a whole.²⁰
- Analysis shows that low-paid workers will retain a proportion of the increase in minimum wages granted by the Commission in this Decision at least as high as, and in some cases higher than, last year's.²¹
- In this Decision, the Commission has been especially cognisant of the financial pressures on low-income households at this time. Movements in consumer prices, in particular, have put many low-income households under considerable financial stress.²²
- 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

¹⁹ *ibid.*, p53

²⁰ *ibid.*, p54

²¹ *ibid.*, p59

²² *ibid.*, p64

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.²³

- Consistent with its previous approach, the Commission will flow on general Wage-Setting Decision 2008 to employees to whom training arrangements apply.²⁴
- 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 ...²⁵
- Where preserved Pay Scales provide a flat dollar amount for casual employees, these rates will be increased to give effect to the 2008 general wage increase.²⁶
- In accordance with Wage-Setting Decision 4/2007, the deferral of general Wage-Setting Decision 2007 for employees of employers in the agricultural industry receiving ECIRS will cease on 1 October 2008.²⁷
- The Commission will flow on its general Wage-Setting Decision 2008 to basic piece rate Pay Scales through applying a 4.15 per cent increase to basic piece rates in preserved Pay Scales which are not otherwise increased as a result of the general decision.²⁸

5.7 When all these facts are considered the ACTU's request that the AIRC flow-on the decision of the AFPC is not unreasonable.

²³ *ibid.*, p69

²⁴ *ibid.*, p71

²⁵ *ibid.*, p73

²⁶ *ibid.*, p80

²⁷ *Ibid.*, p79

²⁸ *Ibid.*, p81

Updated Economic Data

6.1 The ACTU relies on the economic data submitted to the AFPC and shown at Annexure A.

6.2 The conclusions the ACTU drew from that data include:

- Minimum wage workers are not causing inflation.
- The labour market, including in industries and occupations in which minimum wage workers are employed, is strong
- Wages growth is steady, numbers in bargaining continue to increase
- The economy performed well during 2007, and early 2008. The outlook for the economy is positive.

6.3 In this section we update for data which has subsequently become available since May 2008.

Economic Growth

6.4 Gross Domestic Product (GDP) grew by 0.6 per cent in the March quarter 2008 in seasonally adjusted terms, 0.7 in trend terms, to be 3.6 per cent for the year to March quarter 2008, 3.7 per cent in trend terms.²⁹

6.5 Gross Non Farm Product (GNFP) grew by 0.7 per cent for the March quarter 2008 to be 3.6 per cent higher than at the same time last year, in seasonally adjusted terms, 3.5 per cent in trend terms.

²⁹ Data in this section, unless otherwise indicated, are derived from ABS Cat No 5206.0 Australian National Accounts: National Income, Expenditure and Product, March 2008

6.6 The Treasurer recently stated:

While Australia is not immune from global economic developments, we are better placed than most other countries to withstand the fallout. We have highly regarded regulators and do not face the same problems being experienced in the US sub-prime mortgage market. Despite concerns about inflation, the IMF's latest forecasts for growth in Asian and emerging economies remain robust. In particular, the growth outlook for China remains supportive of continued growth in Australia.³⁰

Domestic Final Demand

6.7 Domestic final demand grew 0.9 per cent in the March quarter 2008 to be 4.8 per cent over the year in seasonally adjusted terms, 1.0 per cent and 4.7 per cent higher in trend terms.

Consumption

6.8 The March quarter 2008 saw total final consumption expenditure increase by 0.6 per cent to be 4.1 per cent higher over the year, 1.1 per cent and 4.5 per cent higher in trend terms.

6.9 Household consumption expenditure grew by 0.7 per cent during the quarter, to be 4.3 per cent higher than a year earlier, seasonally adjusted, 1.1 per cent and 4.6 per cent higher in trend terms.

Investment

6.10 Growth in total private fixed capital formation expenditure grew by 0.8 per cent for the March quarter 2008 to be 4.4 per cent higher than in the same quarter in the previous year in seasonally adjusted terms, 0.4 per cent and 4.8 per cent in trend terms.

Private Business Investment Expenditure

6.11 Private business investment expenditure increased by 1.5 percent in the March quarter 2008, increasing by 6.9 per cent over the year in seasonally adjusted terms.

³⁰ Treasurer, IMF July 2008 World Economic Outlook Update, Press Release No 085, 18 July 2008

6.12 The RBA Governor Glenn Stevens in a recent speech stated:

There is a major process of investment going on, by businesses as well as by governments. Business investment is at very high levels relative to GDP, and businesses in aggregate say they intend to increase investment further next year.³¹

Public Investment Expenditure

6.13 Growth in total public fixed capital formation expenditure grew by 5.9 per cent for the March quarter 2008 to be 19.9 per cent higher than in the same quarter in the previous year in seasonally adjusted terms.

Net Exports

6.14 In the March quarter 2008 net exports detracted 0.7 per cent, in seasonally adjusted terms, from GDP. Exports of goods and services increased by 0.5 per cent in the March quarter 2008, and by 2.7 per cent over the year. Imports of goods and services increased by 3.5 per cent in the quarter to be 11.5 per cent higher over the year.

Terms of Trade

6.15 Australia's terms of trade continue to improve. In 2007 Australia's purchasing power reached a 31 year high. The Terms of Trade in the March quarter 2008 rose 1.1 per cent in seasonally adjusted terms, to be 1.1 per cent higher over the year, to remain at historical highs.

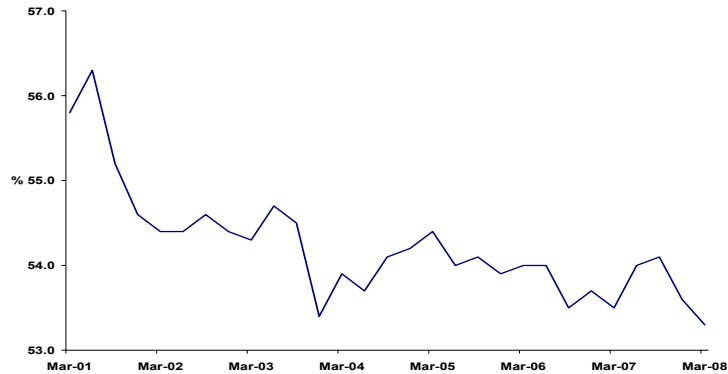
Wage and Profit Shares

6.16 During the current economic expansion the profit share of total factor income has increased from 23.9 per cent to 27.1 per cent of total factor income while the wage share of total factor income has decreased from 55.9 per cent to 53.3 per cent.

³¹ RBA Governor Glenn Stevens, Economic Conditions, Address to the American Chamber of Commerce in Australia Business Luncheon Melbourne - 13 June 2008

6.17 In the March quarter 2008 compensation of employees (COE) represented 53.3 per cent of total factor income. In seasonally adjusted terms COE grew by 1.6 per cent the quarter reflecting a rise of 0.5 per cent in average earnings and a 1.1 percent rise in the number of wage and salary earners.

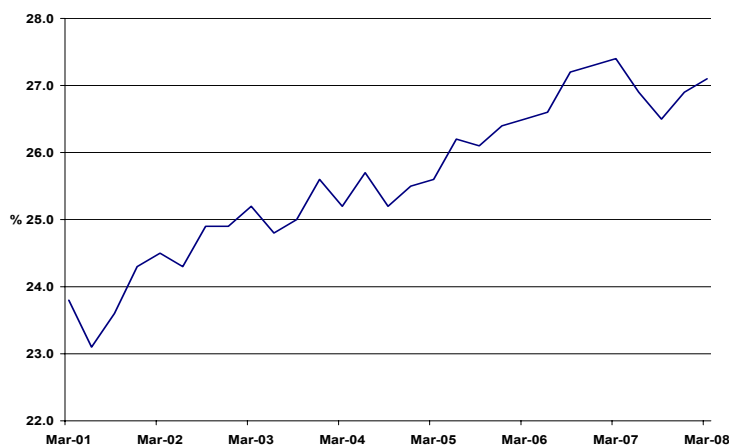
Figure 6.1: Wages share of total factor income



Source: ABS Cat No. 5206.0

6.18 The Gross operating surplus (GOS) of corporations represented 27.1 per cent of total factor income in the March quarter 2008. The quarter saw a 1.6 per cent increase in GOS in seasonally adjusted terms. The ABS notes that GOS of corporations remains at historically high levels.

Figure 6.2: Profit share of total factor income



Source: ABS Cat No. 5206.0

Productivity

6.19 ABS National Accounts indicate over the year to March quarter 2008 growth in hours worked of 3.1 per cent in seasonally adjusted terms, 2.8 per cent in trend terms, and in hours worked market sector of 2.3 per cent seasonally adjusted, 2.5 per cent, trend.

6.20 GDP per hour worked over the year to March quarter 2008 grew by 0.6 per cent, seasonally adjusted, 0.9 per cent trend, and GDP per hour worked market sector grew by 1.9 per cent seasonally adjusted, 2.0 per cent in trend terms.

Non-farm Real Unit Labour Costs (RULC)

6.21 The ABS states that the Non-farm measure of real unit labour costs is generally preferred as it removes some of the fluctuations associated with Agriculture. The ABS National Accounts measure of Non-farm RULC decreased by 0.6 per cent in the March quarter 2008, in seasonally adjusted terms, to be 0.5 per cent higher over the year (-1.0 per cent and 0.1 per cent in trend terms).

Figure 6.3: Unit Labour Costs – Real Non-farm



Source: ABS Cat No 5206.0

Industry Gross Value Added

6.22 The ABS National Accounts provides data on Industry Gross Value Added. Table 6.1 ranks industries according to seasonally adjusted gross value added over the year to March quarter 2008. Five of the seven industries in which low paid workers are predominantly employed, and Agriculture, Forestry and Fishing, in which employers are predominantly non-corporations, are in the top half of the table.

Table 6.1: Increase in Gross Value Added March 2007 – March 2008

1	Finance and Insurance	14.5%
2	Personal and Other Services	7.3%
3	Communication services	6.6%
4	Property and Business Services	5.6%
5	Agriculture Forestry and Fishing	5.6%
6	Transport and Storage	4.3%
7	Retail Trade	4.0%
8	Health and Community Services	3.8%
9	Manufacturing	3.7%
10	Construction	2.6%
11	Government and Defence	1.8%
12	Electricity Gas and Water	1.8%
13	Education	1.6%
14	Wholesale Trade	1.4%
15	Accommodation Cafes and Restaurants	1.2%
16	Mining	0.7%
17	Cultural and Recreational Services	0.4%

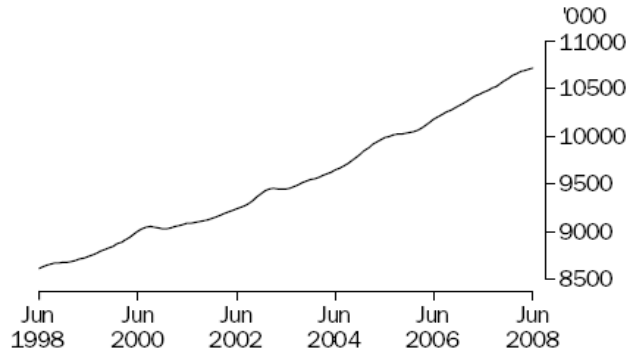
Source: ABS Cat No 5206.0

Employment

6.23 Employment data can be updated for the May and June 2008.³² Seasonally adjusted employment, after declining by 25,600 persons in May 2008, increased by 29,800 in June 2008. Full time employment, having declined by 12,100 persons in May 2008, increased by 24,000 in June 2008. Part time employment, having declined by 13,500 persons in May 2008, increased by 5,800 in June 2008.

³² ABS Cat No 6202.0 June 2008

Figure 6.4: Employment

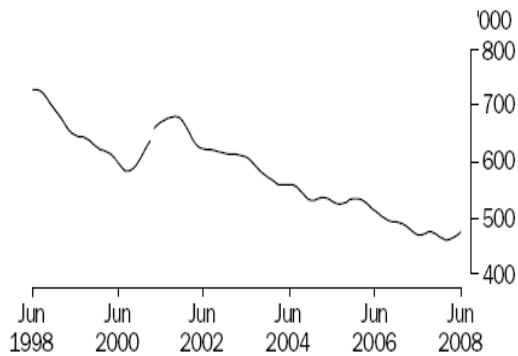


Source: ABS Cat No 6202.0 Labour Force June 2008

Unemployment

6.24 The seasonally adjusted level of unemployment in Australia decreased by 500 persons in May 2008 and 2,800 persons in June 2008. The unemployment rate was steady at 4.3 per cent in May 2008, decreasing slightly to 4.2 per cent in June 2008.

Figure 6.5: Unemployment



Series break at April 2001; see paragraph 16 of Explanatory Notes.

Source: ABS Cat No 6202.0 Labour Force June 2008

6.25 The Labour Force Participation Rate for May 2008 was 65.2 per cent and for June 2008 65.3 per cent, in seasonally adjusted terms.

Inflation

6.26 The June Quarter CPI figures were released by the ABS on 23 July 2008. They show a 1.5 per cent increase in the June quarter 2008. Inflation measured 4.5 per cent through the year to the June Quarter 2008.³³ [ABS Cat No 6401.0]

Wage Movements

6.27 The Department of Employment and Workplace Relations estimates that the average annualised wage increase (AAWI) per employee for all sectors, March quarter 2008, is 3.7 per cent; over the year to March 2008 the AAWI for agreements certified in each quarter averaged 3.9 per cent.³⁴

³³ Inflation for the three quarters December 2007 and March and June 2008 measures 3.7 per cent.

³⁴ Department of Employment and Workplace Relations. Trends in Enterprise Bargaining, March Quarter 2008.

Number of Award Reliant Transitional Employees

- 7.1 There remains considerable uncertainty regarding the number of employees who are the subject of transitional awards. There is no definitive analysis of the numbers involved.
- 7.2 The Australian Bureau of Statistics in its Australian Labour Market Statistics, January 2008, produced indicative estimates of the proportion of employees in the federal and state workplace relations jurisdictions according to the post March 2006 workplace relations system.
- 7.3 The ABS estimates that, at May 2006, 79 per cent of employees (6.6 million) were in the federal workplace relations jurisdiction. The ABS further estimates that of those 6.6 million employees 2 per cent are transitioning out of the federal jurisdiction – their employer was in one of the state jurisdictions but their pay was set by a federally registered agreement or federal award.³⁵
- 7.4 To whatever is the true figure based on the ABS EEH Survey, must be added an unknown, but not inconsequential, number of farm based employees who are the subject of transitional awards.

³⁵ ABS Cat No 6105.0 Australian Labour Market Statistics, January 2008

Decisions of the State Industrial Relations Commissions

8.1 The 2008 decisions of the State Commissions are included in Table 8.1. The decisions of the State Commissions relate to unincorporated businesses, similar to those the subject of these proceedings.

Table 8.1: State Wage Case Decisions 2008

State	Date of Decision	Citation	Amount
NSW	8 June 2008	[2008] NSWIRComm 122, IRC 103 of 2008	4.0 per cent (\$21.25 pw at State Minimum Wage)
WA	26 June 2008	2008 WAIRC 00347	\$29 per week
TAS	18 July 2008	T13142 and T13143	\$19.00 per week
SA	[not yet published]		
QLD	[not yet published]		

AIRC Statement of Principles

9.1 The relevant AIRC Wage Fixing Principle is Principle 8 of the AIRC Statement of Principles - Arbitrated Safety Net Adjustments.³⁶

9.2 In accordance with Principle 8 awards may, on application, be varied to include an arbitrated safety net adjustment subject to the following:

(a) The operative date will be no earlier than the date of the variation to the award.

(b) That at least 12 months have elapsed since the rates in the award were increased

(d) At the time when the award is to be varied to insert the safety net adjustment, each union party to the award will be required to give a specific commitment as to the absorption of the increase.

(e) An absorption clause must be inserted in the award:

9.3 Clause 8(b) is met on this occasion. The ACTU concurs with the view expressed by the Commission in the Wages and Allowances Reviews of 2006 and 2007 regarding Principles 8(d) and (e):

[65] To the extent that the Commission's Statement of Principles is inconsistent with this decision this decision will prevail. To avoid doubt, ..., we shall not require unions to give a commitment to absorption of the kind referred to in Principle 8(d) and there will be no requirement for awards to include a clause in the form provided for in Principle 8(e). It is clear that the variations will only have effect in relation to minimum award rates. ...³⁷

³⁶ op cit.

³⁷ op cit.

Operative Date

- 10.1 As was the case last year, the ACTU anticipates that many of the applications which will seek to flow the decision of this Full Bench will be able to be dealt with by the AIRC Panel system prior to the operative date sought, the first pay period to commence on or after 1 October 2008.
- 10.2 The AIRC Statement of Principles provides at Principle 8(a) that awards may, on application, be varied to include an arbitrated safety net adjustment subject to the following:
- (a) The operative date will be no earlier than the date of the variation to the award.*
- 10.3 Consistent with this Principle, in respect of applications to vary Pre-reform Awards and Transitional Awards, orders made after the date sought of 1 October 2008 should, generally, have effect from the date on which the order is made.
- 10.4 The ACTU submits that this is subject to the general proviso that, where an applicant can satisfy the Commission that there are exceptional circumstances, the Commission should be able to exercise its discretion to grant retrospectivity. This is consistent with Principle 10 of the Commission Statement of Principles:

10. MAKING AND VARYING AN AWARD ABOVE OR BELOW THE SAFETY NET

Any application to make or vary an award for wages or conditions above or below the safety net or for a date of operation of a safety net adjustment earlier than the date of the award may be dealt with by:

(a) a Full Bench; or

(b) a single member, provided the President has had an opportunity to consider whether the application should be dealt with by a Full Bench and has decided not to refer the application to a Full Bench.

10.5 This is also consistent with the statutory provisions in subsection 572(2) and clause 66(2) of Schedule 6 of the Act which provide that awards and/or orders should not take effect earlier than the date of the award/order unless there are exceptional circumstances.

10.6 This is also consistent with the Full Bench decision PR002007:

Operative Date

[19] *It is common ground that variations to pre-reform awards and transitional awards cannot be given retrospective operation unless the Commission is satisfied there are exceptional circumstances. While considerations of equity, as between employees subject to the AFPC decision directly and employees covered by transitional awards, might favour a universal operative date, there are other factors which might weigh against retrospectivity. Because of the publicity surrounding the AFPC's July 2007 decision and these proceedings, it is unlikely that exceptional circumstances would arise in any but a small number of applications. Nevertheless it is undesirable that we speculate on the circumstances which might arise in a particular application. Where a party seeks an operative date earlier than the date of the award or order the onus will be on that party to satisfy the Commission that there are exceptional circumstances.*

[20] *The operative date for any award variations flowing from this decision should be no earlier than the first pay period on or after 1 October 2007. Whether any retrospective*

*operation is awarded after that time will be a matter for the Commission to decide pursuant to the statutory provisions governing retrospectivity.*³⁸

10.7 In this regard we note

- Employers have had effective notice of the likely increase, and date of effect, since 8 July 2008, and have had time to plan for that quantum and date of effect.
- Delays between the making of applications and the determination of the matter have been held to warrant a retrospective date of effect (*Re Victorian Shops Interim Award 2000* (PR922761) at paragraph 21).
- In the forthcoming months of this year, there is a confluence of two streams of work affecting Awards of the Commission which cover workers whose wages and conditions directly rely on Awards – Award Modernisation and the Wages and Allowances Review 2008.

³⁸ Op cit. Australian Industrial Relations Commission [2007] AIRCFB 684, 16 August 2007

Conclusion

- 11.1 The ACTU and Unions claim relating to increases in rates of pay within transitional awards and increases in monetary allowances for transitional and pre reform awards is reasonable, economically responsible and consistent with the objects of the Act.
- 11.2 To not award the claim sought would result in confusion, inequities and increased direct and indirect costs to both employee and employers.

ANNEXURE A

ACTU submissions to Australian Fair Pay Commission