Business SA’s submissions | Australian Fair Pay Commission

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1. Introduction

Business SA is the State’s leading business organisation and represents thousands of businesses through direct membership and affiliated industry and association groups.

We deliver a wide range of integrated services to business, including:

- lobbying and representation on issues significant to industry
- workplace relations advice, advocacy and consulting services
- health, safety, environmental and injury management training and consultancy services
- wide-ranging training programs
- reference publications and handbooks
- international trade and business development services
- management of apprenticeships and traineeships
- administrative support services for industry and trade associations
- networking opportunities
- WorkChoices seminars and workshops

Business SA continues to provide high quality WorkChoices education to business organisations in the metropolitan and country areas of South Australia.

Business SA is a registered association of employers under the South Australian *Fair Work Act 1994* and recognised under that and other legislation as the State’s peak business and employer group.

Business SA has also been granted federal registration under the Transitional Provisions of the Workplace Relations Act 1996.

As the peak employer organisation in South Australia, Business SA is well placed in representing the interests of members across most industries in South Australia.

Business SA provides a comprehensive representative and advisory service on approximately 100 State awards and approximately 230 Federal awards including NAPSAs. Our service not only extends to the supply of requested awards to industry but also includes continual updates of Pay Scale Summaries in federal instruments and consulting with the relevant industrial parties in award related matters.
Through membership of the Australian Chamber of Commerce and Industry (ACCI), Business SA is able, on behalf of the South Australian business community, to play an active role in national issues that impact on the local business community.

Business SA again welcomes the opportunity to make submissions on the 2007 Australian Fair Pay Commission (AFPC) Minimum Wage Review.

Business SA largely endorses the submissions of ACCI in relation to this matter, however, we have also attempted to provide information specific to South Australia which may be of assistance to the Commission.

We look forward to being involved in the consultative process and to assist the Commission in its 2007 review determination.
2. **Background**

2.1 **2006 State Wage Case (SWC)**

2.1.1. As indicated in our submissions for the initial AFPC determination, the Full Bench of the South Australian Industrial Relations Commission (SAIRC) awarded an increase of $17.00 per week in adult award rates up to $570.00 and $18.00 per week in adult award rates above that amount.

2.1.2. The full time adult award minimum weekly wage in South Australian State awards is currently at $501.40 ($13.19 per hour) and the benchmark tradespersons award weekly wage is currently at $596.20 ($15.69 per hour).

2.1.3. The above minimum award rates reflect a difference of approximately $10.50 per week ($0.28 per hour) and $9.50 per week ($0.25 per hour) as compared to the federal minimum wage (FMW) and the federal tradespersons rate respectively.

2.1.4. To date there has been no application from SA Unions in relation to any 2007 review of wages in State awards.

2.1.5. A copy of the 2006 SWC decision is attached for information and completeness. *(Attachment A)*

2.2 **Minimum Standard for Remuneration (MSR) - Pursuant to the Fair Work Act 1994**

2.2.1. Following the establishment of the initial MSR pursuant to Section 69(3) of the *Fair Work Act 1994* in March 2006, the SAIRC initiated a review of the MSR in November 2006.

2.2.2. The review brought the MSR in line with the minimum award wage as established in State awards following the 2006 SWC decision and addressed issues of an interim nature as contained in the 2006 MSR.

2.2.3. Largely through the agreement of the parties, the 2006 MSR was amended to increase the adult minimum weekly wage from $484.40 ($12.75 per hour) to $501.40 ($13.19 per hour).
2.2.4. Junior and apprenticeship rates were adjusted on a proportionate basis to reflect the increased adult minimum wage.

2.2.5. The 2006 MSR which had referred to the National Training Wage (NTW) Award with respect to traineeship rates was amended to reflect the increase granted in the 2006 SWC in lieu of the NTW Award traineeship rates.

2.2.6. The minimum amount payable in relation to the Supported Wage System (SWS) was increased to be in line with the AFPC decision (ie) $64.00 per week.

2.2.7. To avoid any future inconsistency occurring between the award minimum wage and the MSR minimum wage, the parties generally supported the concept of conducting future reviews of the MSR in conjunction with future SWC hearings.

2.2.8. A copy of the 2007 MSR which is operative from the first full pay period commencing on or after 2 March 2007, is attached. (Attachment B)

2.3 Child Labour Application - Pursuant to the Fair Work Act 1994.


2.3.2. The award, to be called the SA Child Labour Award, is to apply to all areas of employment in South Australia and covers employees less than 18 years of age.

2.3.3. Under Section 4 - Interpretation, of the Fair Work Act 1994, a ‘child’ is defined as a ‘person who has not attained the age of eighteen (18) years’.

2.3.4. In the grounds on which the application is made, SA Unions state that S16(3)(e) of the federal Workplace Relations Act specifically excludes child labour law from the provisions of the federal Act.

2.3.5. Clause 26.9 of the proposed award provides for minimum wage rates. For employees under 17 years of age the hourly rate proposed is $6.60 per hour and at 17 years of age, $7.92 per hour. Such rates are consistent with the recently established MSR (refer to 2.2 of these submissions).
2.3.6. If the application is successful and is deemed to cover all businesses, including those businesses currently covered under the federal WorkChoices legislation, the rates as proposed in the Child Labour Award may vary from the Pay Scales affecting junior employees under federal instruments thereby creating uncertainty and confusion.

2.3.7. Business SA has opposed the application of SA Unions to create an award of general application.

2.4 2006 AFPC decision

The AFPC handed down its initial determination on 26 October 2006 covering just over one million Australian workers reliant on wages derived from federal Pre-Reform Awards and Notional Agreements Preserving State Awards (NAPSA’s).

2.4.1. Quantum

2.4.1.1. In general terms, the Standard Federal Minimum Wage (FMW) was increased from $12.75 per hour to $13.47 per hour.

2.4.1.2. In Australian Pay and Classification Scales (APCS) up to and including $18.42 per hour (equivalent to $700.00 per week) an increase of $0.72 per hour was awarded.

2.4.1.3. In APCS over $18.42 per hour, a lesser amount of $0.58 per hour was awarded.

2.4.1.4. Existing APCS for junior employees, trainees and apprentices were awarded the same increase as the adult increases subject to the increase being applied in accordance with previous methodology to ensure relativities between adult rates and junior/trainee/apprentice rates were maintained.

2.4.1.5. Two new FMWs were established for employees with disabilities while the minimum rate payable under the Supported Wage System (SWS) was increased to $64.00 per week.
2.4.1.6. In general, piece work rates were underpinned by basic periodic rates of pay and increased in accordance with the existing percentages or formulas. In the absence of any specific percentages or formulas, the basic piece rate was increased by 5.65%.

2.4.2. Operative Date

The implementation of the decision took effect from 1 December 2006.

2.5 Federal Jurisdictional Coverage

2.5.1. Based on information provided by the Federal Minister for Employment and Workplace Relations in parliament earlier this year, between 62% and 84% of the workforce in South Australia representing between 341,000 and 462,000 employees are estimated to be covered by the federal WorkChoices legislation.

2.5.2. In percentage terms, this is similar to the estimates in all other states.

2.5.3. In surveying our membership, it is estimated that a significant majority of our membership is now in the federal jurisdiction.
3. **2007 AFPC Review Determination**

3.1 **Wage Setting Function / Legislative Parameters / Overall Objective**

3.1.1. In its initial determination the AFPC set out its wage setting powers as follows:

- to adjust the standard FMW
- to determine or adjust special FMWs
- to determine or adjust basic periodic and piece rates of pay
- to determine or adjust casual loadings

3.1.2. The criteria guiding the AFPC in making its wage setting determinations were also set out as follows:

- the capacity for the unemployed and the low paid to obtain and remain in employment;
- employment and competitiveness across the economy;
- providing a safety net for the low paid; and,
- 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.

3.1.3. The overall objective in its decision making process was identified as ‘promoting the economic prosperity of the people of Australia’.

3.2 **Comments on the 2006 AFPC determination**

3.2.1. **Low Paid Employment**

3.2.1.1. In Section 1.3 of its decision, the Commission identified that workers in low paid employment were more likely to be award reliant thereby justifying the higher increase awarded. Employees deemed above that level were granted a lesser increase.

3.2.1.2. The Commission did not seek to define the term ‘low paid’, however, it quantified a range of minimum wages up to $700 per week being indicative of that category.
3.2.1.3. In Section 2.2 - Individual characteristics of the low paid, the Commission outlined a number of characteristics that were typically associated with the term ‘low paid’. Among these characteristics, it was identified that:

> employment was in relatively low-skilled service occupations.
> low paid employees had low levels of formal education
> the majority of such employees have no post-school qualifications

3.2.1.4. While acknowledging that such characteristics are indicative of low paid employment, Business SA submits that the wage range used by the Commission, namely, up to $700 per week, would seem to be somewhat inconsistent with these characteristics.

3.2.1.5. In researching the Pay Scale Summary of the pre-reform Metal and Associated Industries Award 1998, the classification that is identified at or below the $700 wage rate is the C6 classification which prior to the decision was calculated at $680.50 per week ($17.91 per hour).

3.2.1.6. The C6 classification is deemed to be 125% of a tradesperson’s rate and is classified as an Advanced Engineering Tradesperson - Level 1 or an Engineering Technician - Level IV.

3.2.1.7. Such an employee is also deemed to have completed 12 appropriate modules towards a National Diploma or an Advanced Diploma or equivalent.

3.2.1.8. Similarly, in the Pay Scale Summary associated with the Nurses (South Australia) Award (the NAPSA), the classification that is identified at or below the $700 wage rate is that of a Registered Nurse Level 1 - Year 3. The rate of this classification is $675.70 per week ($17.78 per hour).
3.2.1.9. A Registered Nurse at this Level has completed a degree in nursing and is required to deliver direct and comprehensive nursing care and individual care management to patients or clients in a practice setting.

3.2.1.10. Both of the above classification examples are within the wage range identified by the Commission as ‘low paid employment’ thereby justifying the larger increase awarded. However, it is our submission that such classifications would not appear to be consistent with the characteristics of low paid employment as identified in 3.2.1.3, given the nature of the work contemplated at these levels and the skills and qualifications required in such classifications.

3.2.1.11. If genuinely considered in the context of the characteristics of low paid employment, any such wage categorisation should be limited to employees classified at the FMW, or at the most, only extend to classifications below the benchmark trades rate of $15.94 per hour.

3.2.2. Operative Date

3.2.2.1. The prospective nature of the operative date is fully supported. It gives employers who are affected by the decision an opportunity to deal with the usual issues associated with an increase in award wages, prior to the implementation date.

3.2.2.2. However, the approach of applying the increase to operate on and from a particular date has caused significant administrative and calculation problems at the workplace level. This could be avoided by simply adopting the usual approach of ‘first full pay period commencing on or after’ which generally overcomes these issues.
3.2.3. Quantum

While acknowledging the various considerations taken into account by the AFPC in its initial determination, including the time frame of 18 months since the previous increase to Pay Scale reliant employees, the magnitude of the wage increases awarded without any accompanying measures in increasing productivity was a source of concern for employers.

3.2.4. Disability Wages

3.2.4.1. The decision of the AFPC in relation to employees with a disability is appropriate and fully supported.

3.2.4.2. The inclusion of SWS provisions in awards is essential to provide for the employment of workers with a disability.

3.2.4.3. The inclusion of the model SWS Clause in all federal awards provides consistency in the application of wage rates and related conditions to employees with a disability.

3.2.4.4. The establishment of the two new special FMW’s to fill gaps in coverage of the SWS in Pay Scales is appropriate and supported.

3.2.4.5. The increase in the minimum amount payable in the SWS model clause from $62.00 to $64.00 per week to be in line with the Income Test Free Area for the Disability Support Pension is appropriate.

3.2.4.6. Business SA is currently surveying its membership in relation to the impact of the 2006 AFPC decision affecting employees with a disability. Results of this survey are yet to be finalised. It may be that a greater time frame is required to analyse the impact of the AFPC decision in more depth.
3.2.5. Junior Wage Rates

3.2.5.1. The AFPC decision in relation to junior rates to be based on the formulas in the relevant pre-reform wage instrument is sensible and appropriate.

3.2.5.2. The decision to review junior wage arrangements later in the year is noted. Business SA looks forward to making submissions to the AFPC in this regard at the appropriate time.

3.2.5.3. Business SA supports the AFPC decision in relation to traineeship rates as set in Schedule 1 of the decision.

3.2.5.4. As indicated in our previous submissions, Business SA supports a review of minimum wage rates for employees to whom training wage arrangements apply and we look forward to making relevant submissions at the appropriate time.

3.2.6. Implementation Issues

3.2.6.1. It is fully appreciated that the WorkChoices Infoline was newly established and therefore bound to experience some difficulties in dealing with the various issues related to the decision. However, the Department needs to be better briefed on the application of future decisions of the AFPC to ensure that clear directions and assistance is provided to parties relying on this information.

3.2.6.2. It is Business SA’s position that rather than the publication of Pay Scale Summaries by DEWR, revised and finalised actual Pay Scales (as previously included in NAPSA’s and Pre-Reform Awards) should be issued as authorised by the AFPC following consultation with the relevant industrial organisations.

Such Pay Scales would, in our view, have legal authority in enforcing compliance which may not be the case in relation to the current Pay Scale Summaries.
3.2.6.3. There remains a number of Pay Scale Summaries that are yet to be issued in relation to certain NAPSAs. Given that the decision was effective 1 December 2006, this poses a real concern for employers and employees reliant on these Pay Scales. *(Refer Attachment C)*

3.2.6.4. Pay Scale Summaries previously issued are being amended and published as Versions 2, 3 etc in relation to the relevant federal instrument. While it is expected that mistakes will occur and that these errors need to be addressed, there appears to be no way of knowing that a previously published Pay Scale has been superseded by a more current version. Perhaps a list of the amended Pay Scales might alert users as to which Pay Scales Summaries have been amended. Further, it would also be helpful if the revised Pay Scale could actually identify the change or changes that have been implemented in the amended version.

3.2.6.5. (i) It is Business SA’s understanding that with the enactment of the WorkChoices legislation, NAPSAs which contained only full time traineeship arrangements were automatically deemed to contain part time and school-based traineeship arrangements as well.

(ii) There are a number of South Australian NAPSAs which fall into this category.

(iii) Pay Scale Summaries issued by DEWR only reflect full-time hourly traineeship rates in relation to these instruments. It therefore gives the understanding that only full-time traineeship arrangements can be accessed under those instruments which we believe to be inconsistent with the Act.
(iv) It is submitted that the AFPC should address this issue so as to provide more clarity in the operation of traineeship rates that are associated with such NAPSA’s.

(v) A copy of a Pay Scale Summary derived from a South Australian NAPSA which falls in this category is attached.

(Refer Attachment D)

3.2.6.6. Business SA is uncertain on the validity of Pay Scale Summaries derived from the following two NAPSAs which may not exist:

> Building and Construction Workers (State) Award (AN 150022-SA)
> Building Trades and Labourers (Factory and Mixed Enterprises) Award (AN 150668-SA)

Business SA is attempting to clarify this issue with DEWR.

3.2.6.7. (i) There remains, in our understanding, a lack of clarity in the application of the decision on certain NAPSAs. For example, the decision adjusts wage rates in Pay Scales that were not adjusted for the 2005 Australian Industrial Relations Commission (AIRC) decision, by increasing those rates by $17.00 per week. However, some federal wage instruments have also not been adjusted for a Safety Net Adjustment (SNA) prior to the 2005 SNA.

(ii) The Pastoral Industry (South Australia) Award (NAPSA) is such an instrument. The State Award was varied on 19 December 2005 to incorporate the 2003 SNA ($17.00 per week) from 19 December 2005 and to phase-in the combined 2004 SNA ($19.00 per week) and the 2005 SNA ($17.00 per week) from 19 December 2006.

(iii) It would appear that the AFPC decision adjusts the wage rates prescribed in this Pay Scale for the 2005 adjustment (prior to the addition of the 2006 AFPC adjustment) but not for the outstanding 2004 adjustment.
(iv) This outcome would seem to be inconsistent with the Australian Review Taskforce (ART) Recommendation 4 which the Commission indicated it had regard to, that any SNAs from 2000 onwards that had not been applied to classifications need to be taken into account. *(Refer Section 1.3 of the decision.)*

(v) A Pay Scale Summary for this NAPSA is also yet to be published.

### 3.3 Economic Outlook

#### 3.3.1 Inflation

3.3.1.1. CPI results, which are used to measure inflation, were encouragingly low in the December 2006 quarter.

3.3.1.2. In Australia, the CPI was 3.3 per cent; this is a decrease of 0.1 per cent from the previous quarter of September. The inflation expectation for February 2007 is around 2.5 per cent. In Adelaide, the Consumer Price Index was lower than the nation’s average. It has increased 3 per cent compared to last year’s figure, while the figure was 0.3 per cent lower than last quarter’s. The drought has caused the South Australian and Australian inflation to increase. However, Adelaide’s food prices were the least affected among the capital cities.

#### 3.3.2 Population and Employment

3.3.2.1. Between 2005 and 2006, South Australia has had its largest population growth rate since 1991: 0.8% or 12,560 people. The major contributors to this increase were overseas migrants of whom there were 9,495. 8,182 of the 9,495 were skilled migrants arriving via regional migration programs in 2005-2006.

3.3.2.2. The State participation rate was also high at 62 per cent. The increase in the participation rate is mainly due to a higher participation of women in the workforce. In Australia, the participation rate was also high at 64.5 per cent in 2005-2006 periods. In the same period, the unemployment rate was at 5.1 per cent.
3.3.2.3. The drought has also negatively affected the unemployment rate. February 2007 figures show that unemployment in South Australia is 5.3 per cent which is above the national average of 4.6 per cent.

3.3.3 Interest Rate

After a series of interest rate increases in 2006, the Reserve Bank of Australia has decided to maintain the rate at 6.25 per cent in February 2007. The decision to stabilise the current interest rate at this level has been welcomed by businesses and the community Australia wide. However, an increase in minimum wages can result in a wage-price spiral which may in turn cause an increase in interest rates.

3.3.4 Gross State Product (GSP) and Gross Domestic Product (GDP)

In South Australia, the GSP growth for 2005-2006 was at 3 per cent. Significantly however, the South Australian GSP is forecasted to decrease to 2.5 per cent in 2006-07 and this is predicted to last until 2009-10 at around 2.75 per cent. (Source: Department of Parliamentary Services, Monthly economic and social indicators, March 2007). The current Australian GDP growth was at 2.7 per cent and is forecasted to grow to more than 3 per cent for 2006-2007. However, in economic growth terms, Australia is behind all OECD countries and the EU.

3.3.5 Possible Effects of High Minimum Wages

3.3.5.1. Australian and South Australian businesses, especially the agricultural sector, are already struggling to compete with lower prices from overseas markets, mainly due to their low labour costs. Agricultural production is already under significant stress as a result of the drought. A further rise in minimum wages, will make it more difficult for Australian producers to stay in business.
3.3.5.2. Any significant increase in minimum wages will increase business costs making it harder to maintain current employment levels. This can cause a drop in business confidence which is already at a low point in South Australia; decreasing by 15.9 points to 85 in June 2006 quarter according to the survey of business expectations conducted by Business SA. Business confidence is also low nationwide at 86.2 points with a drop of 14.2.

3.3.5.3. Finally, any significant wage increase will put upward pressure on prices causing higher inflation. This could lead to higher interest rates in the future.

3.4 Workplace Agreement Making

3.4.1 Significant changes have been implemented by WorkChoices in terms of agreement making including easier lodgement and approval processes.

3.4.2 These changes have provided greater new options and opportunities for employers and employees in agreement making.

3.4.3 Both at a State and National level the changed environment with respect to agreements has led to a significant increase in the uptake of agreements.

3.4.4 In the latest ABS released data in relation to Employee Earnings and Hours (EEH) survey, various industries and in particular, the hospitality, retail and manufacturing industries, have indicated a trend away from the award system in the past two years.

3.4.5 It is also acknowledged that the gap between wages achieved through bargaining and award minima varies depending on the industry in question.

3.4.6 Business SA submits that in encouraging workplace bargaining as a principal object of the Act, the AFPC has an obligation not to create an environment which diminishes the need or impetus to bargain.

3.4.7 It is clear from Business SA’s members that whilst the FMW is a minimum wage, it is nonetheless used by employees and their representatives as a ‘benchmark’ for negotiating wage increases in workplace agreements. In other words, the higher the increase in the minimum wage, the higher the percentage increase sought in the bargaining stream.
3.5 Minimum Wages and the Federal Minimum Wage

3.5.1 In setting out its 2006 determination, the AFPC stated that the increase granted was sensible and sustainable given the current economic conditions. It also stated that any impact on unemployment would be particularly monitored.

3.5.2 As referred to 3.1.2 of these submissions, a major criteria in its wage setting function includes the capacity of the unemployed and the low paid to obtain and remain in employment.

3.5.3 It is also a well accepted fact in terms of employment that there is a critical relationship between minimum wages and the level of social welfare.

3.5.4 Accordingly, it was acknowledged by the AFPC in its 2006 decision that this required weighing up the consideration of determining a FMW that still provides an incentive for the unemployed to seek employment while also taking into account the effect of the increase on those in employment.

3.5.5 The AFPC concluded that on the evidence available that there is a negative relationship between the level of minimum wage increases and employment in Australia.

3.5.6 It also noted that the flow-on effects of the 2006 decision may be influenced by the fact that a number of award reliant employees had already received wage increases following the various State Wage Case increases in 2006. This was generally the experience in South Australia.

3.5.7 The AFPC will also be aware that increases in minimum wages have historically had a flow-on effect to the non-award sector.

3.5.8 Given that (except for NSW and more recently WA) there have been no State Wage Case applications lodged or progressed, the impact of any increase awarded by the AFPC in its 2007 determination is likely to have a more pronounced effect on employment.

3.5.9 Business SA submits that the full impact of the 2006 increase effective from 1 December 2006 is yet to be fully evaluated. Delays in publishing Pay Scale Summaries; the likelihood of employers who are not members of an employer association being less informed on the wage increase; the extremely limited timeframe period since 1 December 2006; and the uncertainty of some employers in relation to their corporate status, are all valid reasons as to why the impact of the $27.36 per week increase may not be fully realised for some time to come.
3.5.10 Business SA also reiterates its submissions in the 2006 AFPC wage review that the FMW is meant to be an entry level into the labour market. In other words, it is the floor of the wages system from which employees can transition upwards by improving their skills.

3.5.11 In view of the above and given that the 2007 review decision is to be delivered mid year which represents a period of just seven (7) months since the inaugural decision, Business SA strongly maintains that the Commission should exercise a large degree of caution and moderation in its review determination.

3.6 Operative Date

3.6.1 Business SA submits that should any increase be awarded, it should be prospective and operative no earlier than twelve (12) months from the date of operation of the initial determination (ie) 1 December 2007.

3.6.2 This would be in line with the long established practice of a 12 month gap usually associated with such wage increases.

3.6.3 As indicated in 3.2.2.2 of these submissions, any operative date determined should be on the basis of ‘the first full pay period commencing on or after’, rather than taking effect from a particular date.
4. **Award Review Taskforce**

4.1 Business SA notes the Government’s intention to issue award rationalisation requests to the Australian Industrial Relations Commission (AIRC) on a sectoral basis.

4.2 We understand that the scope and timing of the initial rationalisation request is yet to be settled.

4.3 It is also our understanding that key stakeholders will be consulted prior to finalising the initial request to the AIRC.

4.4 Business SA looks forward to being involved in that consultative process.
5. **Summary and Conclusion**

5.1 The AFPC has acknowledged in its previous determination that high minimum wages can lead to a reduction in the number of employees that an employer will hire or retain in employment. This may also include a reduction in working hours for existing employees.

5.2 Small business employers are more likely to be adversely impacted by any substantial increase in labour costs which affects economic viability and makes it difficult to maintain current employment levels let alone increasing such levels.

5.3 High minimum award wages can also have a detrimental effect on the need to or the impetus to bargain at the enterprise level which is inconsistent with the objects of the Act. In addition, it can have a significant bearing on the quantum of increases negotiated in workplace agreements.

5.4 Business SA submits that increases in minimum wages does not lead to productivity gains on a long term basis. Increasing skill levels in the workforce and addressing skill shortages in various industries are the long term solutions to low productivity.

5.5 Business SA again reiterates its earlier submissions on the role of the FMW and the need to contain the categorisation of low-paid employment to those classifications that truly represent the characteristics of the low-paid.