SUBMISSION TO THE
AUSTRALIAN FAIR PAY COMMISSION

(submissions@fairpay.gov.au)

March 2008
The Australian Fair Pay Commission will not accept anonymous submissions.
You must provide identifying information marked * in order for your submission to be accepted.

Your details

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* Name of organisation: Australian Federation of Employers and Industries [A Registered Industrial Organisation and Recognised Peak Council under the Industrial Relations Act 1996 (NSW)].

* Your position: Chief Executive

Submissions may be made public in full or summary form. If you would like your submission to remain confidential please indicate this here:

Confidential: No
Australian Federation of Employers and Industries

The Australian Federation of Employers and Industries (AFEI) is one of the oldest and most respected independent business advisory organisations in Australia.

With over 3,500 members and over 60 affiliated industry associations, our main role is to advise, represent and assist employers in meeting their obligations relating to workplace relations. Our membership extends across employers of all sizes and a wide diversity of industries.

AFEI provides advice and information on employment law and workplace regulation, human resources management, occupational health and safety and workers compensation. We have been the lead employer party in running almost every major test case in New South Wales industrial relations jurisdiction.

AFEI is a key participant in developing employer policy at national and state (NSW) levels and is actively involved in all major workplace relations issues affecting Australian businesses.
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SUMMARY

This submission is in two sections. Section 1 addresses the impact of a high minimum wage on low paid/low skilled workers and raises concerns about wage inflation in less certain economic conditions. Section 2 describes the significant difficulties employers have faced in applying the decisions to certain APCSs and provides some suggestions for remedying these problems.

Section 1

- Centralised wage increases are not related to productivity or other offsetting changes at the workplace. When excessive, they lead to price increases or reductions in employment (or a combination of both). The AFPC minimum wage has not been ‘decoupled’ from award rates and has continued to provide across-the-board increases in rates in industrial instruments as well as provide a higher bargaining floor for above award rate increases, without offsetting productivity gains.

- Whilst labour market conditions have remained strong overall, with continued skill shortages and high participation rates, job growth and participation rates for those on or around the minimum wage have been less positive.

- The AFPC focus should be on the interaction of the minimum wage with tax and welfare arrangements for the low paid, and minimising barriers to employment for those in low paying jobs, rather than mandating a wage increase which will further reduce the employability of low skill/low income earners and add to wage inflation in other sectors of the labour market.
• In the face of the uncertainty in economic and therefore business conditions, combined with the impact of a new government, 2008 is a time for caution in the decisions made by all those who can significantly affect the outcomes of the Australian economy.

Section 2
• Our 2007 submission highlighted 'the missing step' between the actual decision of the AFPC and the method of application of the decision to particular APCS. Many of the implementation issues previously identified remain unresolved. This has meant unnecessary complexity and continuing uncertainty for employers as to the correct application of the AFPC increase and the resulting rates payable to their employees.

• In our 2008 submission we refer the AFPC to particular implementation issues with reference to the Second Wage Setting Decision. To explain the difficulties confronting employers, specific examples are provided which illustrate the issues arising when applying the AFPC increase to particular APCS.

• We submit that the AFPC should take urgent action to promote public understanding as to the application of the AFPC wage setting decisions. The absence of public information on how to implement a wage setting decision seriously impairs the ability of the AFPC to effectively perform its wage-setting function as specified in section 22 of the Workplace Relations Act 1996, both currently or as amended by the Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008.

• We suggest a number of measures that the AFPC may choose to adopt to remedy the implementation issues identified in this submission, including:
• Amending existing AFPC decisions or publishing additional information to include provisions that contemplate and clarify the implementation issues raised in our submission;

• Incorporating in future wage-setting decisions provisions that contemplate the specific circumstances raised in this submission;

• Publishing explanatory notes and examples from actual APCS to illustrate how particular sections of a wage setting decision are intended to be applied;

• Expanding the 'Interpretations' section of the wage setting decisions to include definitions of terms used in the decision that are not currently defined, such as 'relevant adult basic periodic rate of pay'.
SECTION 1

1. The Impact of Minimum Wage Decisions

1.1 The October 2006 and July 2007 decisions of the Australian Fair Pay Commission (AFPC) introduced into the economy substantial minimum wage rises throughout all federal pay scales, which were subsequently matched or exceeded by State Wage Case increases.

1.2 These decisions had both an immediate impact on the employers directly affected and a lagged effect on employers generally as the increases filter through the economy. This is the outcome with centralised, regulated wage increases, which provide the floor for negotiated increases at industry and enterprise levels. Unions claim higher dollar or percentage increases in collective bargaining based on what is awarded through regulation. Whilst the wage fixing procedure may differ, the impact on wages and prices growth of an AFPC wage increase remains unchanged from the previous system. In its previous decisions, the AFPC has recognised the wider impact of its wage increases.

1.3 Private sector wage increases, as measured by the Wage Price Index (seasonally adjusted), have recorded the highest annual increase since the series commenced in 1997, now measuring 4.3%. The National Accounts measure of average non-farm compensation per employee is 4.6% higher through the year ending December 2007. Over the past year, trend average weekly earnings have risen 5.0%, and the ordinary time
earnings of adults are up 4.9%.\textsuperscript{3} Wage growth is clearly gathering pace.

1.4 Strong wage growth, particularly in a tight labour market with low labour productivity growth, is a major contributor to inflation. At 3.6%, underlying inflation is now clearly outside the Reserve Bank's target band of 2\% - 3\%.

1.5 The Reserve Bank has signalled that labour costs are moving beyond a level consistent with keeping inflation within the target band, noting that while there is volatility in the measure of average earnings in the national accounts, the underlying trend appears to have picked up in recent quarters:

\textit{'Overall these data suggest that there has been somewhat more pressure on wages and benefits than indicated by the growth of the wage price index, and that growth in labour costs has been running at a higher level than is consistent with inflation remaining near the centre of the target range'.}\textsuperscript{4}

1.6 Centralised wage increases in particular raise labour costs where that labour is employed on award wages. These increases are not related to productivity or other offsetting changes at the workplace. When excessive, they lead to price increases or reductions in employment (or a combination of both). The AFPC minimum wage has not been 'decoupled' from award rates and has continued to provide across the board increases in rates in industrial instruments provide a higher bargaining floor for above award rate increases, without offsetting productivity gains, particularly in the current tight labour market for skilled workers.

\textsuperscript{3} ABS 6302.1 – Average Weekly Earnings November 2007
\textsuperscript{4} Reserve Bank Statement on Monetary Policy – February 2008
1.7 The OECD reports that among its 26 members, Australian unit labour costs were rising at the fastest pace (with the exception of Norway) in the 12 months to September 2007, having reported in the previous quarter that wages are racing ahead of productivity increases in Australia. The slow down in productivity growth continues, and as a consequence any centrally imposed wage increase is likely to contribute further to inflation.

1.8 While labour market conditions have remained strong overall, with continued skill shortages and high participation rates, job growth and participation rates for those on or around the minimum wage have been less positive.

1.9 As argued in our previous submissions, the AFPC focus should be the real incomes of the low paid; the interaction of the minimum wage with tax and welfare arrangements for the low paid, and minimising barriers to employment for those in low paying jobs, rather than mandating a wage increase which will further reduce the employability of low skill/low income earners and add to wage inflation in other sectors of the labour market.

Economic Consideration

2. Key Factors Affecting our Future Economic Performance

2.1 In recent months a number of economic statistics have given cause for concern:
• Growth in the December quarter GDP slowed markedly\(^6\)
• March 2008 the Reserve Bank announced the twelfth increase in interest rates in three years\(^7\)
• Fall in the Stock Exchange Index by over 15% and the general tightening in the financial markets for funds\(^8\)
• Fall in housing approvals\(^9\)
• Decline in business confidence\(^{10}\)
• Decline in consumer confidence\(^{11}\)
• Decline in consumer spending\(^{12}\)
• Zero or even negative productivity growth\(^{13}\)
• CPI over 3% and unlikely to fall below this level for some time\(^{14}\)
• Wages growth in excess of 4.5%\(^{15}\)
• Increases in the current account deficit with a very strong exchange rate and reduced growth in net exports.\(^{16}\)

2.2 In addition there is a high level of uncertainty in a number of key factors that will affect the economy and business over the next twelve months, including the extent to which:

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\(^6\) ABS 5208.0 Australian National Accounts December 2007
\(^7\) Reserve Bank of Australia Statement 4 March 2008
\(^8\) Australian Stock Exchange ASX S&P Indices
\(^9\) ABS 8731.0 Building Approvals January 2008; ABS 5609.0 Housing Finance January 2008
\(^12\) ABS 8501.0 Retail Trade January 2008
\(^13\) ABS 5206.0 Australian National Accounts December 2007
\(^14\) Reserve Bank Statement on Monetary Policy Economic Outlook February 2008
\(^15\) Reserve Bank Statement on Monetary Policy Wages and Prices February 2008
\(^16\) ABS 5302 Balance of Payments December 2007

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• the global credit squeeze emanating from the United States, sub prime lending and poor lending practices generally play out
• the US economy continues to slow down and moves further into recession
• global financial market problems flow through to Asia; there could be a point at which there will be one financial shock too many
• oil prices continue to rise
• early concerns about inflation and slower growth in China impact the planning and expectations of investors and companies globally
• interest rate increases slow the economy — and how the wage and other markets respond. There are already signs they are affecting the economy. The global credit shortages will probably mean banks will continue to raise rates regardless of the Reserve Bank’s actions
• there is an increase in the number of companies that collapse or at the very least get into difficulties
• labour costs rise with the next bargaining round and union success in raising non-wage costs in leave entitlements, superannuation, reduced hours and environmental matters
• federal and state government responses to these mounting problems are effective — especially what the federal government does to freeze or cut its expenditures to allow for the promised $32 billion of tax cuts.

2.3 The critical question now is — will these early signs of problems in the economy worsen? If economic conditions decline, the low paid, low skilled will be most immediately and severely affected through reduced hours, employment and opportunities to improve their relative position in the workforce.
2.4 Recently there have been significant changes in key economic indicators. AFEI believes the current situation is so uncertain all institutions whose actions have an effect on the economy should proceed with caution. Given the speed with which changed economic circumstances have emerged, it is not surprising that there has been a divergence of views from economists about the road ahead.

2.5 However, these views now seem to be converging. At one end of the spectrum there are those who take a relatively optimistic view of the current situation. It is argued that the Australian economy will be able to cope with the current financial turmoil and US recession/global uncertainty because of strength in domestic demand, the rising terms of trade and the dampening actions of the Reserve Bank in raising interest rates to slow inflation.

2.6 This view is based on the belief that the economy has reached a level where it can take a temporary setback or slower growth period, but that it is fundamentally sound. However as the numbers emerge from each wave of economic statistics here and in the US, this view seems questionable at the very least.

2.7 The alternative view is that the emerging financial problems, a more severe US recession and wage and other pressures in Australia will continue our current consumer and business confidence downward spirals in the face of high inflation, high interest rates, a credit crunch, high rents, uncertain housing and commercial property markets and consequently, reduced business investment.
2.8 We are heavily dependent on China for our continued prosperity. If the Chinese economy weakens and global growth slows then it is likely that Australian exports falter at the same time as domestic demand is slowing, forcing Australia to go through a period of below trend line growth, thus pushing unemployment upward. This would lead, in turn, to house prices falling further, the share market would continuing its decline and volatility, and further falls in consumer and business confidence.

2.9 We suggest there is a strong possibility of a reduction in the rate of growth to below 3% and toward the unemployment growth trigger of 2.5%. This slow down will be most marked in the sectors of the economy where there is a higher proportion of low paid workers — retail and wholesale trade, manufacturing, business services and personal services areas.

2.10 Labour will remain difficult to obtain in some sectors with skill shortages persisting. Thus many businesses will face the dual pressures of reduced demand and increased costs — wages, interest rates, petrol, transport, infrastructure costs generally. Many businesses will be in the difficult situation of increased labour costs and skilled labour shortages, combined with the need to shed low skilled labour.

2.11 The Reserve Bank has indicated the underlying rate of inflation will fluctuate around 3.5% to December 2008 but this will mask variable price increases in different areas and for different goods and services. The cost of labour intensive products will continue to rise sharply with increasing labour costs. Clearly the price of crude oil and how it translates into the pump price will play a central role. The Reserve Bank’s forecast for moderating inflation in 2009 is dependent on a significant slowing in non-
tradables inflation, which will depend on a noticeable easing of capacity pressures in the domestic economy.

2.12 In the face of the uncertainty in economic and therefore business conditions, combined with the impact of a new government, 2008 is a time for cautious decision making by all those who can significantly affect the outcomes of the Australian economy.

3. The Impact of the Minimum Wage on the Employability of the Low Paid

3.1 “Developments in the minimum wage will depend on the decisions of the Fair Pay Commission. Its remit has a strong emphasis on the employability of the low paid. The minimum wage is high in international comparison and the number of low skilled who are long-term unemployed or disabled is also high, thus raising concerns about the adverse effects of the minimum wage on labour demand for the low skilled. At the same time, the minimum wage is a blunt tool to enhance fairness, as more than half of the low paid live in families with income above the median”.

3.2 This OECD statement reflects the issues raised by AFEI in our two previous submissions to the AFPC. Our major concern was to direct the AFPC’s attention to the labour market circumstances of the low paid and the unemployed:

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17 OECD Economic Surveys: Australia 2006

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The emphasis in the AFPC's statutory charter is on the capacity of the unemployed and low paid to obtain and remain in employment, coupled with advancing the competitiveness of the economy.

Consequently in this submission we have again sought to direct the AFPC's attention to considering the function and impact of the minimum wage and the interests of those particularly affected by minimum wage increases, the unemployed and the marginally employed.

The focus should be to raise the incomes of low income households rather than low wage workers; the minimum wage is a blunt instrument to fix a range of social problems. 18

3.3 The AFPC focus should remain on the labour market outcomes of that sector of the labour force who earn the minimum wage or around the minimum wage, and the jobless who would be low income earners if they were to gain employment. This entails close attention to the economic issues which have most impact on low wage earners.

3.4 The research and monitoring approach introduced by the AFPC in 2007, while in its infancy, is to be commended. Focussed research and systematic monitoring is vitally important in assessing the demand and supply effects of regulated wage increases and should be part of any regulatory wage setting arrangements.

18 Employers First AFPC Submission 2007
4. Employment and Unemployment Outcomes

4.1 The AFPC Economic and Social Indicators Report\(^{19}\) (the Report) maintains that the employment situation of low wage earners \textit{in some areas} has been improved by the strong growth overall in the economy, and by changes in welfare entitlements. But the research also indicates that the outcomes expected by those who argue against the maintenance of a high minimum wage continue to persist, and that the growth in the minimum wage in the past two years has slowed job growth for low paid workers and worsened the chances of the unemployed or underemployed finding work, even in the recent buoyant economic circumstances.

4.2 The Report’s analysis of occupational employment indicates that employment growth in low-skilled occupations, designated as elementary clerical, sales and service workers and labourers and related workers, has been lower than for all other occupations in recent years.\(^{20}\) Not only has it been lower, in 2006-2007 the rate of employment growth for these groups slowed in contrast to higher skilled occupations.

\(^{19}\) Australian Fair Pay Commission Economic And Social Indicators – Monitoring Report, July To December 2007

\(^{20}\) Op cit page 17

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4.3 Relevantly, the 2006 Access Report shows that over the past decade (and after controlling for economy-wide and industry-wide effects), the employment of low-paid workers has tended to grow at or below the rate of high-paid workers.\(^{21}\) Further, the statistical estimates used by Access (described as providing only moderate guidance) suggest a negative impact on demand for low paid workers under the previous Safety Net Review regime and the inference that "SNR wage decisions in times past raised the wages of low-paid workers relative to their productivity on a number of occasions over the past decade".\(^{22}\)

4.4 The more difficult employment prospects for the lower skilled are also seen in DEEWR data which show that over the 12 months to November 2007, the largest increases in employment (original data) occurred for Professionals (up by 107,000), Intermediate Production and Transport workers (up by 60,000) and Managers and Administrators (up by 56,300).\(^{23}\)

\(^{21}\) Access Economics Pty Ltd. Report commissioned by the Australian Fair Pay Commission 2006 Monitoring Strategy for Wage Setting Decisions page 17
\(^{22}\) Op cit page 17
\(^{23}\) Department of Education Employment and Workplace Relations Australian Labour Market Update January 2008
4.5 Employment growth rates, in declining skill order, are shown below:

Table 1

<table>
<thead>
<tr>
<th>Occupational Group</th>
<th>Growth Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Managers and Administrators</td>
<td>6.7%</td>
</tr>
<tr>
<td>Professionals</td>
<td>5.4%</td>
</tr>
<tr>
<td>Associate Professionals</td>
<td>0.2%</td>
</tr>
<tr>
<td>Tradespersons and Related Workers</td>
<td>1.8%</td>
</tr>
<tr>
<td>Advanced Clerical and Service Workers</td>
<td>5.3%</td>
</tr>
<tr>
<td>Intermediate Clerical, Sales and Service</td>
<td>0.7%</td>
</tr>
<tr>
<td>Intermediate Production and Transport</td>
<td>6.8%</td>
</tr>
<tr>
<td>Elementary Clerical, Sales and Service</td>
<td>3.1%</td>
</tr>
<tr>
<td>Labourers and Related Workers</td>
<td>-1.4%</td>
</tr>
</tbody>
</table>

Source: DEEWR Australian Labour Market Update January 2008

4.6 Similarly, the unemployment rates by occupational group are presented in descending skill order below:

Table 2

<table>
<thead>
<tr>
<th>Occupational Group</th>
<th>Unemployment Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Managers and Administrators</td>
<td>1.1%</td>
</tr>
<tr>
<td>Professionals</td>
<td>1.1%</td>
</tr>
<tr>
<td>Associate Professionals</td>
<td>1.2%</td>
</tr>
<tr>
<td>Tradespersons and Related Workers</td>
<td>1.0%</td>
</tr>
<tr>
<td>Advanced Clerical and Service Workers</td>
<td>1.5%</td>
</tr>
<tr>
<td>Intermediate Clerical, Sales and Service</td>
<td>2.7%</td>
</tr>
<tr>
<td>Intermediate Production and Transport</td>
<td>3.2%</td>
</tr>
<tr>
<td>Elementary Clerical, Sales and Service</td>
<td>3.7%</td>
</tr>
<tr>
<td>Labourers and Related Workers</td>
<td>6.0%</td>
</tr>
</tbody>
</table>

Source: DEEWR Australian Labour Market Update January 2008
4.7 Those industries with a high concentration of low wage earners—Accommodation, Cafes and Restaurants, Health and Community services, Property and Business services, and Retail Trade were also examined in the Report to ascertain relative rates of employment growth. While overall employment growth in two of the five industries was higher than average for the economy as a whole, this growth was attributable to high skill/higher pay jobs in those industries. The Report observes that “generally, employment growth in low-skilled occupations has been slower than in each industry as a whole.”

4.8 The Australian Bureau of Statistics also reports lower employment growth in industries with a high concentration of low wage earners:

Table 3
Employed Persons By Industry (Trend)

<table>
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</thead>
<tbody>
<tr>
<td>Retail Trade</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accom Cafes Restaurants</td>
<td>-1.9</td>
<td>4.8</td>
<td>6.4</td>
<td>-2.5</td>
<td>4.2</td>
<td>-3.4</td>
</tr>
<tr>
<td>Property &amp; Business Services</td>
<td>5.2</td>
<td>5.2</td>
<td>-1.2</td>
<td>1.3</td>
<td>0.8</td>
<td>-0.1</td>
</tr>
<tr>
<td>Health &amp; Community Services</td>
<td>4.3</td>
<td>0.5</td>
<td>4.3</td>
<td>1.7</td>
<td>-0.2</td>
<td>1.1</td>
</tr>
<tr>
<td>Personal &amp; Other Services</td>
<td>5.3</td>
<td>-5.2</td>
<td>6.8</td>
<td>1.0</td>
<td>0.0</td>
<td>2.5</td>
</tr>
</tbody>
</table>

Source: ABS 6105.0 Australian Labour Market Statistics January 2008 table 2.1

4.9 Given the data presented in the Report, it appears the conclusion that “there have been some positive trends in employment for low skilled, Pay Scale reliant workers” requires qualification. What is clear is that the previous trend in slow or negative employment growth for low skilled workers persists even in a period of strong economic growth. The data presented
raises the obvious question - what will be the outcome with less favourable economic conditions and a higher minimum wage?

4.10 In its most recently published analysis of the job search experience of the unemployed, the Australian Bureau of Statistics reports that 61% (297,700) of unemployed people did not have any non-school qualifications.\(^{25}\) The most common reason cited for not getting a job was insufficient skills or experience i.e. the price the employer was prepared to pay for skills not matched by the skill level on offer. Employers will pay for the skills, but will not substitute lower skilled employees who have to be paid at a higher rate than their productive value.

4.11 What AFEI has observed is the continued exposure of industries with a high concentration of low skilled workers to regulated wage increases, and a greater vulnerability of jobs in those industries to changes in labour costs. Regulated wage increases have a direct, negative effect on the demand for low paid workers in industries with high relative labour costs. Employers will only offer jobs if wages, labour on costs and return on output make economic sense. Even in an economy operating at near full employment, at the current minimum wage employers are not creating or retaining enough jobs suited to low skill/low wage workers.

5. Participation Rates

5.1 The Report cites the increased participation rate and lower unemployment rate of demographic groups with high proportions of low skilled workers.\(^{26}\)

\(^{25}\) Australian Bureau of Statistics 6222.0 - Job Search Experience, Australia, July 2007

\(^{26}\) Op cit page 16
5.2 While participation and employment rates for certain demographic groups with low skills low wages are said to have improved over the past year, this effect appears to be driven by changes in tax and welfare measures, particularly in the case of single parents, and by increases in interest rates and inflation lowering the real income of households.

5.3 In our 2007 submission considerable attention was given to the actual extent of unemployment and its interaction with welfare recipients.

5.4 With a high minimum wage (the highest in the OECD) and without further changes to tax and welfare measures, it is difficult to see how there can be a departure from the well-established patterns in participation rates over the past two decades.

5.5 As AMP.NATSEM point out, over the past two decades workers with no post-school qualifications have the lowest participation rates and males in particular have borne the brunt of this trend. Unqualified men have more than double the unemployment rates of tertiary qualified men.27

5.6 In terms of qualifications and participation rates, while the overall number of employed grew by 1.38 million or 18%, jobs for people without qualifications only grew by 166,000 (4%) and, for those with a trade or other qualifications, by 244,400 (8%). At the same time, there was a doubling of the number of employed degree-qualified people.28

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27 AMP.NATSEM Income and Wealth Report Issue 12 November 2005 page 1
28 Op cit page 11
5.7 It is well established that participation drops as qualifications decrease. People with degree qualifications or above have the highest participation rate, while those with no post-school qualifications have the lowest. This observation is the same for males or females and has remained unchanged throughout the decades.

5.8 The AMP.NATSEM report shows that unskilled males have borne the brunt of job losses, while women and part-time workers have contributed most to the increases in participation. Over the period 1990 – 2003, males without post-school qualifications, experienced the greatest drop (down 9.8%). If the labour force participation rate of unskilled males had remained at its 1990 level, an additional 338,000 males without post-school qualifications would have been holding or seeking jobs in 2003.29

5.9 Overall the rise in participation rates has been modest over the past two decades, up by only 3.5%, and driven by an increase in part-time work.

6. Underemployment

6.1 The Report has a positive view of the improved capacity of the labour market to take on the unemployed. However, even with the employment data showing very limited success in creating job growth for the unemployed, employment and unemployment measures are only part of the picture. We refer to our 2007 submission to the AFPC which described the magnitude of the problem of underemployment and marginal attachment to the labour market.

29 OECD System of Unit Labour Cost Indicators January 2008

AFEI Submission to Fair Pay Commission March 2008

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6.2 Minimum wage increases have an impact on both the availability of jobs — the price at which employers are prepared to take on additional workers — and also on the capacity of the labour market to match hours of work offered with the hours that people want to work.

6.3 The most recent data available from the Australian Bureau of Statistics points to a continuing mismatch. Just over half a million Australian workers would prefer to work more hours, and are available to do so. These underemployed workers account for 4.7% of the total labour force and when combined with the 4.2% of the unemployed, represented a labour force underutilisation rate for September 2007 of 8.9%. Whilst this is down from 9.7% in 2006 and 12.6% in 2001, most of the change is due to the fall in unemployment. The number of underemployed workers has changed little; from 5.7% in 2001 to 4.7% in 2007 (the unemployment rate dropped from 6.8% to 4.2%).

7. Conclusion

7.1 If employers are to take on more low skilled workers, the minimum wage must be set at a level which encourages them to do so. This does not necessitate the payment of a "poverty wage" or a fall in living standards for the low paid if accompanied by appropriate adjustments in tax, welfare eligibility and income support measures. If the demand for unskilled/low skilled labour is to be increased, its cost to business must be reduced.

30 ABS 5266.0 Underemployed Workers September 2007
7.2 The Report notes the minimum wage has declined relative to average earnings. We have had a strongly growing economy with skill shortages and capacity constraints. Average earnings in this situation will grow faster given the higher wage growth at the top end of the labour market. This does not mean that all wages should grow at this rate. Where AFPC sets a minimum wage at a high level apparently to meet objectives of social equity and comparative wage justice, the market will continue to determine job retention and creation.

7.3 The effects of minimum wage increases are not restricted to the impact on low wage earners. Increases flow through the labour market through industrial instruments, and provide a platform for bargaining for higher wage earners. The minimum wage under the AFPC has remained an integral part of a centralised wage fixing system, an inherent part of the cycle of increases, but which is unrelated to labour productivity. Excessive wage increases will keep people out of work; setting a wage which allows those who want to work to find a paid job should be the AFPC’s main focus, not maintaining wage relativity with market rates which are determined on quite different criteria.
SECTION 2

IMPLEMENTATION

8.1 To date, the AFPC has handed down two wage setting decisions, the first effective from 1 December 2006 and the second effective from the first full pay period to commence on or after 1 October 2007. Both decisions have provided for two tiered increases that apply to all preserved APCS, unless specifically excluded by the AFPC (such as the NSW SACS pay scale in 2007).

8.2 In our submission to the AFPC before the July 2007 Minimum Wage Review we raised significant reservations regarding the application of the first wage setting decision. Our submission highlighted "the missing step" between the actual decision of the AFPC and the method of applying the decision to particular APCS.

8.3 Many of the implementation issues previously raised remain unresolved following the effect of the 2007 Minimum Wage Decision of the AFPC. This has meant unnecessary complexity and continuing uncertainty for employers as to the correct application of the AFPC increase and the resulting rates payable to their employees.

8.4 AFEI again raises concerns regarding the ambiguity surrounding the implementation of the AFPC wage setting decisions. We submit that the AFPC should take urgent action to promote public understanding as to the application of the AFPC wage setting decisions for employers in accordance with the Workplace Relations Act 1996 ("the Act").
9. Pay scales and the Vacuum of Uncertainty - a Double Jeopardy for Employers

9.1 Uncertainty as to the rate payable and ambiguity regarding the application of the two AFPC increases, combined with the absence of any legally binding rates of pay, continues to produce inconsistent interpretations as to the rate that is payable under an APCS.

9.2 This situation reaffirms the need for legally binding and accessible pay rates for employers. This was previously acknowledged when the AFPC committed to a process of consultation to create and publish new Pay Scales. In its second wage setting decision, the AFPC stated:

*The creation of new Pay Scales will establish binding interpretations of the current notional Pay Scales assisting employers with compliance and employees to have a clear understanding of their minimum wage entitlements.*

9.3 However, following the change in government the AFPC announced that it would cease the process of creating and publishing APCS. Currently, no body beside a court of competent jurisdiction can provide any certainty as to the rates payable under a preserved APCS, leaving no affordable method available to an employer to access a definitive document containing binding rates of pay.

9.4 This situation creates unacceptable outcomes for all parties. It results in disputes between employers and employees and leads to increased litigation on the amount payable, placing additional and avoidable burdens and costs on employers.
9.5 DEWR (and now the Workplace Authority) have published certain "pay scale summaries" as a measure to reduce uncertainty. These summaries have no legal force, are published without consulting the AFPC or the parties to the pre-reform wage instrument. These "summaries" are often changed without prior warning with the rates displayed in many "summaries" varying without explanation at different points in time, and without any permanent record of the rates payable.

9.6 The "pay scale summaries" contain the following statement:

"Demonstrated compliance with the details published in this pay scale summary by an employer bound to observe the provisions of the equivalent preserved Australian Pay and Classification Scale (pay scale) will be deemed by the Workplace Ombudsman as satisfying the employer's obligations under the pay scale..."

9.7 This statement is followed by the Disclaimer:

"By agreeing to use this summary of information, the user agrees:

- that the Commonwealth of Australia does not give any guarantee, undertaking or warranty whatsoever in relation to the summary, including in relation to the accuracy, completeness or currency of the summary; and

- to indemnify and hold harmless the Commonwealth from and against any loss or liability suffered by a user or a third party, arising out of the provision of the information, howsoever caused, including due to the negligence of the Commonwealth."
9.8 The above statements confirm that an employer cannot rely on the accuracy of the information in the summary, yet they should pay the rates exhibited at any point in time to avoid prosecution by the Workplace Ombudsman. This creates a situation of double jeopardy for employers and creates further ambiguity, rather than providing the clarity originally intended.

9.9 Considering the civil remedies under the Act for a contravention of the Australian Fair Pay and Conditions Standard ('AFPCS') (an individual employer can be penalised $6,600 for a breach and $33,000 for a body corporate) ready access to reliable information as to the minimum rates payable is essential.

Our submission:
Definitive and accessible pay rates that are legally binding are essential in a regulated wage fixing system where employers are compelled to pay at least the specified minimum rate for a job. Documenting these rates and explaining their application is most appropriately done by the body that determines and adjusts wages.

10. Addressing Implementation Issues in the context of Changing Powers of the AFPC

10.1 AFEI notes the limitations of the AFPC to publish definitive pay rates in light of the proposed legislative changes contained in the Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008 ("the Bill") that has the potential to significantly alter the powers of the AFPC.
10.2 If the Bill is passed the AFPC's powers will no longer include the ability to publish new APCS, nor to determine basic periodic rates of pay and basic piece rates of pay payable to employees or employees of particular classifications as part of its wage-setting function (see legislative note contained in section 22 (1) of Workplace Relations Act 1996).

10.3 According to the Explanatory Memorandum of the Bill, these amendments will 'confine the functions of the AFPC to undertaking annual minimum wage reviews; adjusting wage rates in existing APCS as a result of those reviews; and adjusting the standard FMW or a special FMW'. (Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008 Explanatory Memorandum, page 82-83)

10.4 AFEI notes that such amendments will no longer allow the AFPC to publish new pay scales containing legally binding rates of pay. However, the amendments contained within the Bill will have no impact on other powers of the AFPC which will continue to function in their current form.

10.5 Relevantly, one of the AFPC's functions under the Act is "to undertake activities to promote public understanding of matters relevant to its wage-setting and other functions" (section 21 of WRA)

10.6 Further, under section 26 of the Act, 'the AFPC may, as it thinks appropriate, publish other information about wages or its wage-setting function ...in any way the AFPC thinks appropriate'.

AFEI Submission to Fair Pay Commission March 2008
Our submission:

We note that the AFPC has limited powers to produce legally binding pay rates and publish definitive pay scales. Given these restrictions, it is our view that the AFPC should use its powers under the Act to promote public understanding by providing a mechanism to ensure that wage setting decisions are correctly applied.

Ideally this would involve the inclusion of provisions or instructions in wage setting decisions that stipulate how the increase should be applied in particular circumstances. This could involve the inclusion of illustrative examples from particular pay scales and explanatory notes that address the implementation issues raised in our submission.

10.7 AFEI refers the AFPC to the following implementation issues with reference to the second Wage Setting Decision. To explain the difficulties confronting employers, specific examples are provided which illustrate the issues arising when applying the AFPC increase to particular APCS.

11. Implementation Issues

11.1 Implementation Issue 1:

Where an APCS contains future increases, which increment is used to determine the amount of increase to be applied?

11.1.1 Clarification is needed as to the implementation of any AFPC increase to an APCS that contains pre-determined increases contemplated by s208(4) of the Act. Specifically, what rate the AFPC intends to be used as the threshold to determine the appropriate increase applicable.
11.1.2 This issue was previously raised with the AFPC in relation to the preserved pay scale derived from *Miscellaneous Workers – Kindergartens and Child Care Centres (State) Award* and the application of the 2006 AFPC decision. Specifically in our previous submission we stated:

"The implementation issue that arises is: at which point in time, and on which increment is the 2006 Wage Review Decision applied. The particular increment to which the increase should be added would determine which amount should be applied i.e., $0.72 or $0.58 respectively...

Employers First™ recommends that the AFPC consider, when making any further decision, at what point they intend to have the decision apply to APCS that have preserved incremental increases, in order to remove any ambiguity, to avoid 'double-dipping' and to ensure a uniform application."

11.1.3 In its 2007 Wage Setting Decision the AFPC declined to address this issue in particular although it made the following acknowledgement:

"The Commission received a number of submissions which raise the issue of wage increases awarded on the basis of work value change or pay equity which operate under s. 208(4) of the WR Act. Many of these submissions address the relationship of these increases to the Commission's Wage-Setting Decision 1/2006. (AFPC Wage Setting Decision, 2007, Executive Summary, page 15, emphasis added)

11.1.4 Instead, the AFPC focused on the need to preserve pre-reform work value increases in the childcare sector:
"Submissions from the childcare sector also raise the operation of s. 208(4) on Pay Scales within this sector. These submissions argue that pay increases awarded on the basis of work value or pay equity under s. 208(4) and pay increases resulting from Wage-Setting Decision 1/2006 have had a negative impact on the childcare industry.

The Commission considers that s208(4) is intended to account for circumstances in which wage increases, wholly or in part, reflect changes in work value. In the Commission's view, exempting the childcare sector from Wage-Setting Decision 3/2007 would diminish the work value increases already awarded."

(AFPC Wage Setting Decision, 2007, Executive Summary the AFPC, page 16)

11.1.5 It should be noted that AFEI did not seek an exemption for the childcare sector from the increase granted by the AFPC. We simply sought clarification as to the implementation of the increase (refer March 2007 Employers First submission pages 21 and 22). Such clarification was not provided leaving our members in the untenable position of having no certainty as to the correct rates of pay to be paid to employees in this sector, particularly given the penalty that applies if an APCS is breached.

11.1.6 We again raise our concerns about the application of the AFPC increases to this pay scale and the resulting uncertainty that employers face due to the absence of any legally binding pay rates or guidance as to how to apply the AFPC decisions to an APCS containing future increases.
11.1.7 The APCS derived from Miscellaneous Workers – Kindergartens and Child Care Centres (State) Award contains incremental increases preserved by section 208(4) of the Workplace Relations Act 1996.

11.1.8 By way of background, on 7 March 2006 a decision of the Industrial Relations Commission of NSW awarded a new classification structure and significant increases to the rates of pay on the grounds of work value and equal remuneration in Re Miscellaneous Workers Kindergartens and Child Care Centres etc (State) Award (150 IR 284 and 150 IR 290). Copies of the Full Bench Decision and Statement can be found in Annexure A & B respectively.

11.1.9 In its decision the NSW IRC set new rates of pay and a new classification structure for employees, however, in consideration of the financial viability of particular centres (150 IR 290 at 352), it determined that the new rates and classification structure would be phased in over time. It was intended that by March 2008 the original classification structure would merge into the new classifications awarded by the NSW IRC and the rates payable would be the amounts as determined by the IRC.

11.1.10 The implementation issue that arises is what rate of pay is intended by the AFPC to be used to determine the increase to be applied to the APCS? Or put another way, was it envisaged by the AFPC that the rate awarded by the NSW IRC be utilised or should the proportion of that rate payable at the effective date of the AFPC decision be used?
11.1.11 Our view is that the rate awarded by the NSW IRC or the end rate should be used as a basis for determining this threshold, and that increase would apply from the relevant effective date set by the AFPC.

11.1.12 Using the end rate as the basis for the threshold used to determine the amount of increase applicable to the APCS:

- preserves the rates of pay as determined by the Industrial Relations Commission of NSW on work value and pay equity grounds (being those which will apply from 1 March 2008)

- avoids unintended double dipping for certain classifications that are yet to reach the end rate

- preserves the classification structure granted by the Industrial Relations Commission of NSW without unnecessarily disturbing the transitional arrangements during the phase-in period that would prevent particular classifications from merging into the new classification structure.

11.1.13 Alternatively, using the rate of pay on the effective date of the AFPC decision as the basis to determine the increase to be applied results in certain classifications receiving a higher increase relative to other classifications and thereby inappropriately disturbs the relationship between the classifications as deliberately determined by the NSW IRC. This result is contrary to the AFPC's intention in its previous Wage Setting Decision to preserve the work value increases in the childcare sector (as referred to in 11.1.4). We note that this
does not occur if the end rate is used as a basis for determining the $18.42 per hour threshold.

11.1.14 Further, this method creates an absurdity in that from March 2008, certain employees (particularly Co-ordinator classifications) under the new classification structure would have two rates of pay and under the original classification structure would receive a decrease in their rates of pay as they progress through the steps.

11.1.15 This is illustrated in the "Pay Scale Summary" contained in Annexure C as published by DEWR on 2 August 2007 in the extract as follows:

<table>
<thead>
<tr>
<th>Old Award Level</th>
<th>Step</th>
<th>New Award</th>
<th>Rate at 1 Dec 2006</th>
<th>Rate at 1 Oct 2007</th>
<th>Rate at 1 Apr 2008</th>
<th>Rate at 1 Jun 2008</th>
<th>Rate at 1 Aug 2008</th>
<th>Rate at 1 Oct 2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Co-Ord Qual Sml</td>
<td>1</td>
<td>Co-Ord Qual OOSH</td>
<td>17.6061</td>
<td>18.3103</td>
<td>19.03</td>
<td>19.76</td>
<td>20.52</td>
<td>20.66</td>
</tr>
</tbody>
</table>

11.1.16 As shown in the above extract if the proportion of the end rate of pay at 1 December 2006 and 1 October 2007 are used to determine the applicable AFPC increase for a Co-ordinator Qualified Small steps 1, 2 and 3 (original classification structure), instead of the end rate awarded by the NSW IRC, then from 1 March 2008 despite the merging into a single classification of Co-ordinator Qualified OOSH (as awarded by
the NSW IRC), there are two different rates of pay ($24.51 and $24.37) for the final single classification.

11.1.17 Further, if the original classifications are preserved then a Co-ordinator at Step 1 (in first year of service) receives a higher hourly rate of pay (being $24.51) than a Co-ordinator at Steps 2 and 3 (being an hourly rate of $24.37 for an employee in their second and subsequent year of service). That is, as an employee progresses through the original steps of this classification, their rate of pay actually decreases.

Our submission:
The AFPC should make explicit which rate of pay (the end rate or the rate payable at the effective date) it intends to be used as the threshold for determining the increase to be applied in APCS that contain future increases under section 208(4). In considering this issue the AFPC should consider the effect this has on the rates of pay and classification structure to avoid any unintended consequences.

Implementation Issue 2

11.2 Where a pre-reform wage instrument specifies a method or formula for calculating a rate of pay that refers to another rate of pay, as well as, other rate provisions, loadings and allowances; how is the AFPC increase intended to be implemented?

11.2.1 In applying the AFPC increase in 2006 and 2007, both Wage Setting Decisions have contemplated two specific sets of circumstances:

1. where a pre-reform wage instrument specified a rate of pay by a formula or method that refers to another rate of pay (section D1), or
2. where such instruments specified the rate of pay as a flat monetary amount and how that monetary amount is to be increased (section D2)

11.2.2 The resulting question is how is the AFPC increase to be applied where a pre-reform wage instrument contains a method or formula that does not strictly fit into either of these categories?

11.2.3 For example, certain pre-reform wage instruments include methods of calculating an end rate that involves multiple steps. Often, such methods refer to another rate of pay (satisfying the requirement of section D1) and also contemplate additional components, including industry specific loadings and allowances, which are used to derive a total hourly end rate.

11.2.4 Examples of such methods can be found in the following pre-reform wage instruments:

- National Building & Construction Industry Award
- Building & Construction Industry (State) Award
- Building Employees Mixed Industries (State) Award
- Plumbers & Gasfitters (State) Award

(Relevant clauses from these instruments can be found in Annexure D)

11.2.5 The interaction of instruments such as those listed above with the previous AFPC decisions raise multiple issues that require urgent clarification by the AFPC.

11.2.6 AFEI requests the AFPC consider the following:

(a) Section D1 of the July 2007 AFPC Decision states:
D1 Where a pre-reform wage instrument specified a rate of pay by a formula or method that refers to another rate of pay
Where a basic periodic rate of pay or a basic piece rate of pay was derived from a rate in a pre-reform wage instrument that, immediately before 27 March 2006, was determined in accordance with a formula or method which referred to another rate of pay, then the basic periodic rate of pay or the basic piece rate of pay is increased by applying that formula or method to the basic periodic rate of pay or basic piece rate of pay derived from that other rate of pay (as it was immediately before this wage-setting decision), after that derived rate of pay has been increased by Section C or Section D, as applicable, of this wage-setting decision.

The issue that arises is which particular methods is section D1 intended to apply to? That is, is its application intended to be limited to methods that refer to only one other rate of pay or is its application intended to be broad and cover a situation where a method prescribes calculations of multiple components, which also include a reference to another rate of pay?

(b) At what point in a multiple component formula is it intended that the AFPC increase should be applied? The point of application significantly affects the value of the final amount payable.
By way of an example we refer the AFPC to Annexure E that illustrates how the resulting rate of pay differs depending on whether the AFPC increase is added to the starting rate or the end rate using the formula contained in the Building and Construction Industry (State) Award.

(c) What is the basic periodic rate in this instance and how does this impact on the application of the formula? Put another way, is the basic periodic rate of pay:

i. the total end rate derived from the formula; or

ii. the rate produced by the formula after certain allowances (that may not form part of the basic periodic rate) are disaggregated; or

iii. the starting rate and the formula is unable to be applied as it produces a loaded total rate (arguably inclusive of both a basic periodic rate of pay and certain allowances that may not form part of the basic periodic rate of pay)?

Where particular components of such formulas form part of the basic periodic rates of pay but other components may not, how should the formula be applied?

11.2.7 We note that in respect of questions surrounding whether particular components form part of the basic periodic rate of pay, the Full Bench of the AIRC reached the following conclusions, regarding the components of the National Building & Construction Industry Award:
The fact that s.181 contemplates that a basic periodic rate of pay may be determined by reference to other provisions tends to negate any suggestion that, because of the manner in which it is calculated, the follow the job loading is not part of a basic periodic rate of pay.

The leading hand rates in cl.18.4 also incorporate the follow the job loading. The clause prescribes rates for leading hands based on the number of employees they supervise. The provision is similar to cl.18.3.1. As such it determines basic periodic rates of pay for supervisors.

We have considered the possibility that the leading hand rates should be characterised as allowances. The fact that they are calculated by adding various amounts to the rates of the employees under supervision might give some support to that characterisation. While the rates are not expressed as allowances that is not a persuasive consideration because it is necessary to look at the substance of the provision. The substance of this provision is a supervisory classification structure and rates based on the number of employees supervised and the rates of pay applying to those employees.

*It follows from these conclusions that cl.18.3.1 and 18.4 are part of the APCSs and not part of the pre-reform award.*

11.2.8 Therefore, in the view of the AIRC, the method specified in 18.3.1 prescribing the calculation of the hourly rate of pay forms part of the APCS and, accordingly, interacts with the AFPC decision.

11.2.9 This issue was previously raised by AFEI (Employers First 2007 Submission, page 28):

"...The predominant concern being that these calculations have developed over a long industrial history and that there needs to be an explicit direction for how the Commission’s decision should be applied. The precise point in which the increase is added can have a significant effect on the total end rate.

11.3 Where it is clear that there are specific mechanisms for calculating a wage rate, it is the view of AFEI that these mechanisms continue and to ensure that the appropriate increase is granted, that the Commission refer to relevant NAPSA terms, in their decision and the appropriate point of application. This could be by way of examples and/or annotations throughout the decision not dissimilar from the ‘notes’ provided in the Act (as can be seen in s.22 above)."

Our submission:
Where a pre-reform wage instrument specifies a method or formula for calculating a rate of pay that refers to another rate of pay, and includes other rate provisions, loadings and allowances the AFPC should consider and provide instruction as to how such formulas are intended to interact with the relevant wage setting decision so that the AFPC increase can be correctly implemented.
Implementation Issue 3

11.3 Would section D2 (b) of the AFPC’s July 2007 Wage Setting Decision apply in a situation where a pre-reform wage instrument provides a method for increasing a rate of pay and this method includes a reference to a decision of the AIRC or a State Industrial Authority that previously applied to the instrument?

11.3.1 The AFPC July 2007 decision states

D2 Where a pre-reform wage instrument specified a rate of pay as a flat monetary amount and how that monetary amount was to be increased

Where a basic periodic rate of pay or basic piece rate of pay was derived from a rate in a pre-reform wage instrument that, immediately before 27 March 2006, was expressed as a flat monetary amount and the pre-reform wage instrument specified how that flat monetary amount was to be increased, then:

(a) where the specification of how the flat monetary amount was to be increased included a reference to another rate of pay, the basic periodic rate of pay or basic piece rate of pay is increased in the manner specified, by reference to the basic periodic rate of pay or basic piece rate of pay derived from that other rate of pay (as it was immediately before this wage-setting decision), after that derived rate has been increased by Section C or Section D, as applicable, of this wage-setting decision; and
(b) where the specification of how the flat monetary amount was to be increased did not include a reference to another rate of pay, the basic periodic rate of pay or basic piece rate of pay is increased in the manner so specified to give effect to the increase provided for in Section C of this wage-setting decision.

Clarification is needed as to what the intention of the AFPC is when it states "the basic periodic rate of pay... is increased in the manner so specified to give effect to the increase provided for in Section C of this wage-setting decision"

Where a pre-reform wage instrument contains a method for increasing rates of pay that refers to a previously applicable increase (such as AIRC Safety Net Adjustment or State Wage Case Adjustment)

11.3.2 Since this method is a specification of how the flat monetary amount was to be increased does this interact with section C of the AFPC decision in accordance with section D2 (b)?

11.3.3 How does this interaction occur? Is a reference to a previously applicable increase simply substituted by a reference to the AFPC increase?

11.3.4 By way of example, the following pre-reform wage instruments are discussed in detail below to assist in illustrating these implementation issues:

- Theatrical Employees (Recreation Grounds And Raceday Racing Officials - NSW And ACT) Award 2000
• Liquor Industries Race Courses Showgrounds Etc – Casual Award

• Exhibition Industry (NSW) (State) Award

11.3.5 All three instruments provide a formula (or ‘specification’) for how the flat monetary amount contained in the pre-reform wage instrument was to be increased prior to reform commencement, hence satisfying section D2(b).

11.3.6 Each formula, however, involves converting a previously applicable increase which was expressed weekly to an hourly figure then loading the hourly increase as specified, this loaded increase is then added to the previous rate of pay.

11.3.7 The issue that arises is how the AFPC increase interacts with these specifications so the ‘basic periodic rate of pay is increased in the manner so specified to give effect to the increase provided for in Section C of this wage-setting decision’.

11.3.8 AFEI refers to the following by way of example:

(a) Theatrical Employees (Recreation Grounds And Raceday Racing Officials - NSW And ACT) Award 2000

Clause 7 of this pre-reform wage instrument titled Theatrical Employees (Recreation Grounds And Raceday Racing Officials - NSW And ACT) Award 2000 (AW799620) provides the following specification of how the flat monetary amount was to be increased:
7. ADJUSTMENT OF RATES FOR SAFETY NET DECISIONS

7.1 In applying Safety Net decisions to this award, the hourly rates of pay shall be calculated to the nearest ten cents; any broken part of the ten cents in the result which is less than five cents shall be disregarded.

7.2 Where Safety Net decisions prescribe a dollar amount, this award will be adjusted by dividing the dollar amount by 38 and adding a loading of 20%, provided always that such adjustments are rounded off in the fashion described in 7.1 above.

Prior to reform commencement, this award was last increased by order of the AIRC on 9 September 2005 to increase wages in respect of the 2004 Safety Net Adjustment. Accordingly, the related APCS would be subject to both increases contained in sections B and C of the October 2006 Wage Setting Decision.

Our position is that in applying the 2005 Safety Net Adjustment (section B of the first Wage Setting Decision) the method stipulated in clause 7 of the pre-reform wage instrument can be applied to the APCS in accordance with D2 of the October 2006 Wage Setting Decision.

However, when applying the increase specified in section C using the same method the following issues arise:
How does an hourly AFPC increase interact with a reference to a weekly increase that no longer applies?

Is this reference to be superseded by a reference to the AFPC decision? However, since the AFPC increase is no longer weekly, unlike the previous safety net adjustment, it would be no longer necessary to divide the amount by 38, and doing so, would result in a disproportionate increase to the rate of pay.

If the formula cannot be applied in its full capacity, should the parts that do still apply be utilised? That is, is it correct to use the applicable sections of 7.1 and 7.2 and in the above circumstance, to take the hourly increase and add a loading of 20%, round to the nearest 10c and add this amount to the previously applicable rate of pay?

AFEI agrees with iii above, as this would preserve the original operation of the method specified in the instrument, which appears to be the intention of the AFPC.

(b) **Liquor Industries Race Courses Showgrounds Etc – Casual Award**

Similarly, the pre-reform wage instrument titled *Liquor Industries Race Courses Showgrounds Etc – Casual Award* (AW787006) contains the following specification of how the flat monetary amount was to be increased:
13.8 Where National Wage Case decisions prescribe an adjustment of a flat weekly amount, adult hourly rates in this award will be adjusted by dividing the dollar amount by 40 and adding the following loadings:

13.8.1 Monday to Saturdays - 50%

13.8.2 Sundays - 100%

13.8.3 Public Holidays - 150%

This pre-reform award covers only casual employees and expresses rates of pay on an hourly basis. It is our understanding that the operation of the method contained in clause 13.8 prior to reform commencement was to convert weekly increases of the AIRC to an hourly form and load this amount by the appropriate figure to account for the casual nature of employees employed under the award.

(c) Exhibition Industry (NSW) (State) Award

The pre-reform state wage instrument PART B: MONETARY RATES TABLE 2 - CASUAL RATES contained a reference to the following:

**Note:** The amount of the adjustment to hourly rates for casuals shall be determined in the following manner. The State Wage Case adjustment amount (if any) shall be divided by 38 and the resulting amount loaded by 20%.
11.3.9 The implementation issues common to all three of the above examples that arise when applying the AFPC increases (stipulated in section C of the respective decisions) are:

- Does section D2 of the first wage setting decision and section D2(b) of the second wage setting decision apply?

- If so how does the increase stipulated in section C interact with the specified method previously contained in the Award?

11.3.10 It is noted that since the AFPC increase is no longer weekly (unlike the previously applicable safety net adjustment and state wage case adjustments), it would appear no longer necessary to divide the amount by 38 or 40 as required by the stipulated method, and doing so, would result in a disproportionate increase to the rate of pay.

However, should the AFPC increase be loaded by the relevant amount stipulated in the specification, as seemingly required by section D2(b) of the 2007 Wage Setting Decision?

**Our submission:**

In future Wage Setting Decisions the AFPC should include further information as to how it intends section D2(b) of its Wage Setting Decision to apply in specific circumstances. In particular, the AFPC should address how it intends the increase awarded to interact with references to previously applicable wage increases that form part of a specified method for calculating increases to rates of pay.
Implementation Issue 4

11.4 In section D3 of the July 2007 Wage Setting decision, what is the intended meaning of the terms "relevant adult basic periodic rate of pay"?

11.4.1 Section D3 of the AFPC decision states:

D3 Junior rates of pay not otherwise adjusted by a formula

Where a basic periodic rate of pay that expressly applies to all junior employees or a class of junior employee was derived from a rate of pay in a pre-reform wage instrument that, immediately before 27 March 2006, was expressed only as a flat monetary amount and no formula or method for setting or increasing the rate was specified, then either:

(a) where there is a relevant adult basic periodic rate of pay in the relevant Pay Scale, the junior rate of pay is increased so as to maintain its proportion to the lowest relevant adult rate, as increased by Section C or Section D, as applicable, of this wage-setting decision; or
(b) where the relevant Pay Scale does not specify such a relevant adult rate, the junior rate of pay is increased so as to maintain its proportion to the lowest adult basic periodic rate of pay in the Pay Scale (after that adult rate has been increased by Section C or Section D, as applicable, of this wage-setting decision).

11.4.2 In the July 2007 AFPC decision there was no guidance as to what is meant by ‘relevant adult basic periodic rate of pay’. It is our understanding that unless an APCS specifies a comparable adult rate to be used for the adjustment of a junior rate, following the AFPC decision, the junior rate is increased to maintain its proportion to the lowest adult rate of pay in the APCS.

11.4.3 This issue was raised previously by AFEI (Employers First AFPC Submission 2007, page 29), in relation to the APCS derived from the Clerical and Administrative Employees (State) Award:

12.3 By way of example AFEI refers the Commission to the Notional Agreement Preserving the Clerical and Administrative Employees (State) Award. The junior rates are set out in two parts (see Annexure G). Table 2(a) contains the rates to be applied to junior employees who perform work equivalent to grade 3 or above. While a reference is made to the type of work to be performed there is no ‘relevant rate identified’. Consequently it is the view of AFEI that in lieu of a relevant rate being identified, all junior rates should be calculated with reference to the ‘lowest adult rate’.
11.4.4 If the Commission intends for a contrary interpretation, for example, that any reference to an adult rate is sufficient to make it the relevant comparative rate than that should be explicitly expressed.

**Our submission:**
AFEI seeks clarification from the AFPC as to whether this term refers to a comparable adult rate specified in the instrument as the rate for adjustment of a junior rate of pay, or if any reference to an adult rate (such as the reference in the classification structures of many pre-reform wage instruments in the Clerical Industry to the type of work performed) would be a 'relevant adult basic periodic rate of pay' for the purposes of section D3 of the decision.

**Implementation Issue 5**

11.5 In section D3 of the July 2007 Wage Setting decision, what is the intended meaning of “maintain its proportion to” the applicable adult rate and what is the correct method to ensure that this proportion is maintained?

11.5.1 Section D3 of the AFPC decision provides that where a junior rate in a pre-reform wage instrument is expressed as a flat monetary amount (and there is no formula for adjustment in the instrument) then that junior rate of pay is increased ‘so as to maintain its proportion’ to the lowest relevant adult rate or adult basic periodic rate of pay in the Pay Scale (whichever is the applicable adult rate).

11.5.2 Further, page 90 of the AFPC wage setting decision 2007 states:
In circumstances where there was no formula in the pre-Work Choices wage instrument (for example, where a junior rate was originally expressed as a dollar value rather than a percentage), the general increase will be pro rated so that the junior rate retains its relativity to the relevant adult rate in the preserved Pay Scale. If no relevant rate is identified, the junior rate will be adjusted to retain its relativity to the lowest adult rate in the Pay Scale. For example, if the dollar value of a junior rate represented 70 per cent of the relevant adult preserved Pay Scale prior to the general wage increase being applied to the adult Pay Scale, then the junior rate should be adjusted so that it remains as 70 per cent of the relevant adult preserved Pay Scale after the general increase has been applied to the adult rate.

11.5.3 Our understanding as to the operation of D3 means that a junior rate of pay would be increased by applying the proportion of that junior rate to the applicable adult rate in the pay scale immediately prior to that applicable adult rate being increased to reflect an AFPC decision.

11.5.4 This means that from time to time, the actual proportion of the junior rate to the applicable adult rate may differ following the application of the AFPC increase and the rounding of the rates of pay.

11.5.5 By way of an example AFEI refers to the junior rates contained in the Icecream Makers (State) Award and related APCS. As can be seen in Table 4, the actual proportion of the junior rates to the lowest adult rate fluctuates following the application and rounding of the rates in accordance with the AFPC decisions (see calculations at Annexure G).
Table 4: Junior proportions in Ice-cream Makers APCS

<table>
<thead>
<tr>
<th>Age Category</th>
<th>Proportion of Junior Rate to lowest Adult Rate of Pay on 27 March 2006 (%)</th>
<th>Proportion of Junior Rate to lowest Adult Rate of Pay after 1 December 2006 (%)</th>
<th>Proportion of Junior Rate to lowest Adult Rate of Pay after 1 October 2007 (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 17 years of Age</td>
<td>44.42746</td>
<td>44.42815</td>
<td>44.42846</td>
</tr>
<tr>
<td>At 17 and under 18 years of Age</td>
<td>52.57742</td>
<td>52.56598</td>
<td>52.55212</td>
</tr>
</tbody>
</table>

Our submission:

If the AFPC intends for an alternate interpretation to be used, such as using the proportion of the junior rate to the applicable adult rate upon reform commencement, rather than the proportion in the APCS as varied from time to time, this should be made explicit.

11.5.6 A similar implementation issue arises in respect of apprentice rates of pay in certain APCS.

Implementation Issue 8

11.6 What is the appropriate method to be used to increase an apprentice rate "so as to maintain its proportion to the base tradesperson's basic periodic rate of pay (after that tradesperson's rate has been increased by Section C or Section D, as applicable, of this wage-setting decision)"?

11.6.1 The July 2007 AFPC Decision states:
Apprentice rates of pay not otherwise adjusted by a formula

Where:

(a) a basic periodic rate of pay expressly applies to all apprentices or a class of apprentice; and

(b) that rate was derived from a rate of pay in a pre-reform wage instrument that, immediately before 27 March 2006, was expressed only as a flat monetary amount; and

(c) no formula or method for setting or increasing the rate was specified;

that basic periodic rate of pay is increased so as to maintain its proportion to the base tradesperson's basic periodic rate of pay (after that tradesperson's rate has been increased by Section C or Section D, as applicable, of this wage-setting decision) for the trade to which the apprentice rate applies.

11.6.2 The question that arises is what is the appropriate method to be used to increase an apprentice rate 'so as to maintain its proportion to the base tradesperson's basic periodic rate of pay (after that tradesperson's rate has been increased by Section C or Section D, as applicable, of this wage-setting decision)'It?

11.6.3 That is, in order to maintain its proportion to the increased adult rate of pay, is the proportion that is to be applied to the apprentice rate:
(a) the proportion of the applicable apprentice rate to the applicable adult rate contained in the APCS immediately prior to the application of the AFPC increase, or

(b) the proportion of the applicable apprentice rate to the applicable adult rate contained in the APCS immediately before reform commencement?

11.6.4 The resulting apprentice rate may differ depending on which approach is to be applied.

11.6.5 This issue is illustrated by looking at the APCS derived from the NSW Electricians State Award. As can be seen in Table 5, the actual proportion of the apprentice rate to the applicable electrical mechanic rate of pay (the lowest tradesperson's rate) differs after the application of each AFPC increase to the rates. This fluctuation can be attributed to the rounding of the rates in accordance with the AFPC decisions (see calculations at Annexure H).

11.6.6 Any fluctuation in the applicable proportion has the capacity to impact on the apprentice rate of pay. That is, the actual rate payable may change depending on which proportion is to be applied.
TABLE 5: Indentured Apprentices (Clause 4.2.1 of pre-reform state wage instrument)

<table>
<thead>
<tr>
<th></th>
<th>Proportion of Apprentice to Electrical Mechanic Rate of Pay on 27 March 2006 %</th>
<th>Proportion of Apprentice to Electrical Mechanic Rate of Pay after 1 December 2006 %</th>
<th>Proportion of Apprentice to Electrical Mechanic Rate of Pay after 1 October 2007 %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st Year</td>
<td>37.871377</td>
<td>37.9016393</td>
<td>37.8865979</td>
</tr>
<tr>
<td>2nd Year</td>
<td>51.394928</td>
<td>51.4098361</td>
<td>51.4175257</td>
</tr>
<tr>
<td>3rd Year</td>
<td>74.23913</td>
<td>74.2295082</td>
<td>74.2268041</td>
</tr>
<tr>
<td>4th Year</td>
<td>85.235507</td>
<td>85.2459016</td>
<td>85.2448453</td>
</tr>
</tbody>
</table>

Our submission:
The AFPC should indicate which method it intends to be applied to maintain the proportion of the apprentice rate to the applicable tradespersons rate to reduce ambiguity as to the interpretation of section D4 and minimise possible disparity in the calculation of such rates.

Implementation issue 7

11.7 The Commencement Date of the Decision

11.7.1 AFEI commends the AFPC's commitment to fixing an annual timetable for future pay increases:
"The Commission has determined to conduct an annual minimum wage review and announce its wage-setting decisions in July each year, with an implementation date in October of that year. By fixing an annual timetable for minimum wage reviews, the Commission provides stakeholders with advance notice of the implementation of future wage decisions."

(AFPC Wage Setting Decision 2007, page 73)

Our submission:

In the absence of any legally binding rates, it is crucial for any decision to be made available well in advance of the commencement date to allow adequate time for the decision to be applied to each APCS.

Implementation Issue 8

11.8 Ability for Employers to Offset the AFPC increase

11.8.1 Page 73 of the 2007 Wage Setting Decision stated:

"This increase may be offset against any equivalent amount in rates of pay received by employees whose actual wages are determined by above minimum Pay Scale arrangements."

11.8.2 AFEI agrees with the AFPC including in its Wage Setting Decision a clause providing for the increase to be absorbed into rates of pay that are above the minimum rate payable under an APCS.
11.8.3 We note that the absence of such a statement caused confusion for employers following the 2006 Wage Setting Decision.

Our submission:
The AFPC should continue to include a statement of absorption in future wage setting decisions.

12. Concluding Statements & Recommendations

12.1 AFEI recommends that the AFPC give consideration to the implementation issues contained in this submission and recognise the necessity for the AFPC to provide further clarity as to how it intends its Wage Setting Decision to be applied to particular APCS.

12.2 Under the Act the AFPC is obliged to 'to undertake activities to promote public understanding of matters relevant to its wage-setting and other functions' (section 21).

12.3 How a wage setting decision is to be applied to an APCS is of crucial importance to the AFPC's wage setting function. Indeed, the absence of public information on how to implement a wage setting decision seriously impairs the ability of the AFPC to effectively perform its wage-setting function as specified in section 22 of the Act (both currently or as amended by the proposed Bill as the case may be).

12.4 There are a number of avenues that the AFPC may adopt to remedy the implementation issues identified in this submission, including:
• Amending existing AFPC decisions or publishing additional information to include provisions that contemplate and clarify the implementation issues raised in our submission;

• Incorporating in future wage setting decisions provisions that contemplate the specific circumstances raised in this submission;

• Publishing explanatory notes and examples from actual APCS to illustrate how particular sections of a wage setting decision are intended to be applied;

• Expanding the 'Interpretations' section of the wage setting decisions to include definitions of terms used in the decision that are not currently defined, such as 'relevant adult basic periodic rate of pay'.

12.5 While AFEI asks the AFPC to utilise its powers under the Act to assist in rectifying these implementation issues, we also urge the AFPC to be mindful of escalating any existing problems or creating any unintended consequences in doing so.

12.6 We thank the AFPC for this opportunity to provide feedback on the implementation of its previous wage setting decisions and to make recommendations for future decisions. If the AFPC requires any additional information, we are happy to be contacted to discuss the issues raised in our submission further.