Equal Remuneration — Child care workers — Statement of conclusions as to variation of award in respect of wage rates and conditions of employment — Work value — Equal pay — Gender-based undervaluation — Classification structure and rates of pay.

Wage Fixation — Child care workers — Statement of conclusions as to variation of award in respect of wage rates and conditions of employment — Work value — Equal pay — Gender-based undervaluation — Classification structure and rates of pay.

Competing applications were made for variations of rates of pay and conditions of employment in the Miscellaneous Workers Kindergartens and Child Care Centres etc (State) Award.

Held: Rates of pay should be increased and gender-based undervaluation should be remedied. The decision of the Commission appears immediately after this statement.

A Searle and N Quinn, for the Union.

T McDonald and D McManus, for Employers First.

G McKay, for Catholic Commission for Employment Relations.

B Kennedy and subsequently J Pearce and L Maloney, for Australian Child Care Centres Association and Peppercorn Holdings (No 4) and Hutchinson Child Care Services and for Association of Quality Child Care Centres of NSW Inc.

RJ Burbridge QC and J Pearse, for the Australian Child Care Centres Association and Association of Quality Child Care Centres of NSW Inc on the Notice of Motion (22 November 2005).

The Commission

These proceedings involved competing applications for variations to the rates of pay and conditions of employment fixed by this award, which applies to pre-schools, long day care centres and other child care services such as out of school hour centres. While the award parties reached a measure of agreement in relation to an interim wage increase and alterations to certain conditions, the
Full Bench was required to consider other changes sought to conditions, including the award classification structure. Whether certain rates of pay should be increased, or decreased, also had to be considered.

The competing claims were pressed under Commission's Special Case, Work Value Change and Equal Remuneration principles. This is the first occasion on which the Commission has been called upon to consider the value of the work of child care workers and various support worker classifications covered by this award.

It is also the first occasion the Commission has been called upon to consider fully contested proceedings brought under the Equal Remuneration principle.

For reasons which we now publish, we have concluded that work value change sufficient to satisfy the requirements of the Work Value principle, have been established for child care workers and co-ordinators, but not for support workers. We have also concluded that a case of gender based undervaluation has been established, in the case of child care workers, authorised supervisors and co-ordinators, in accordance with the Equal Remuneration principle. That claim was not advanced in relation to support workers.

The case pressed by Employers First and supported by Association of Quality Child Care Centres of NSW Inc and by Australian Child Care Centres Association, for decreases in rates of pay of 6 per cent, for those employed in pre-schools was not made out on the evidence and has accordingly been rejected. So, too, has the claim that co-ordinators should be removed from the hours and overtime provisions of the award, so that they could be required to perform unlimited ordinary hours of work, without payment of any overtime.

The evidence showed that the vast preponderance of views expressed over some years as the result of various investigations, surveys and considerations conducted by Federal and State government bodies and forums, as well as in academic research, was that the work of child care workers is undervalued. Some employer witnesses also accepted those views, albeit only in relation to qualified staff. Child care workers are generally perceived to have low pay and low status. Over 95 per cent of those employed in the industry are women. The industry has experienced difficulty in the attraction and retention of staff, more in some areas than others, notwithstanding that the cost of the service provided by these centres is underwritten by Federal and State government financial support, as well as by fees paid by parents.

On one view, such problems could be addressed by employers paying staff more than the minimum rates of pay fixed by the award. On the evidence, however, very few employers have chosen to do so, either because of concerns about the consequences for the financial viability of their centres, given parental resistance to fee increases, or perhaps because such an approach maximises their profit levels.

There can be no doubt of the importance to our society of the work which the predominantly female child care workers employed in this State, perform. The responsibility which they bear for the care and education of the largely under school aged children who attend these centres is of significant value, as is the skill and complexity of their work. The increasingly detailed attention which all arms of government have paid to the regulation of this industry underscores this fact.

Despite this, the award parties, through the agreements which they have made and which the Commission has approved over the years, have failed to ensure
that the award fixes minimum rates of pay, properly and adequately reflecting the value of this work. Even the conclusions reached by Glynn J in 1998 about undervaluation of the work of those employed in long day care centres in the Pay Equity Inquiry, failed to generate proper attention by those award parties, to the undervaluation of this work.

10 Compounding this situation, is the fact that these female employees, working with vulnerable children in their care, have in the main themselves been unable to negotiate appropriate rates of pay directly with their employers, on an over-award basis. The serious personal consequences of this situation for these employees have been graphically illustrated on the evidence led in these proceedings.

11 These circumstances have persisted, despite the now longstanding concern repeatedly expressed in a variety of forums, including by government, that child care workers are underpaid.

12 They have persisted, even though employers face ongoing problems in attracting and retaining child care workers to the industry, problems which, on their own evidence, affect the quality of the care which their services are able to offer.

13 The evidence also showed that increasingly, the employers in this industry are operating child care services for their own profit. This has resulted from steps taken by government to encourage the growth of extra child care places available to the community. Government support for not-for-profit services has declined at the same time.

14 Parents have been receiving increasing subsidy from government for the cost of child care, but even this has not resulted in rates of pay for child care workers, reflective of the value of their work, either under the award, or outside it.

15 This position persists, despite the entry into the industry of one, at least, substantial corporate employer, rapidly growing its business throughout the State and generating very substantial and growing profits for its shareholders.

16 While generally it may be difficult to detect gender based undervaluation in this case, no other explanation for the obvious undervaluation of the work of child care workers was ventured by any witness. Given the evidence led in the proceedings, we are well satisfied that the undervaluation case was established.

17 In seeking to demonstrate the nature of the alleged undervaluation, as well as bringing evidence as to changes in work which have impacted on the work of both child care workers and teachers, the Union drew various comparisons between the work of teachers employed at the centres covered by this award, with the work of child care workers. The employers did likewise. This approach accords with the provisions of the Equal Remuneration principle. The employers also sought to introduce into this award certain conditions of employment which came from the award applying to teachers employed in long day care centres. The evidence clearly demonstrated the real importance of this comparator.

18 Applicable Regulations require that once a child care centre offers more than 29 places, a teacher must be employed. Some centres employ teachers, even though not required to do so by the Regulation. This is because of the view taken that trained teachers add to the quality of the education, which the centre is then able to offer. Where a teacher is not employed, a qualified child care worker must be employed. Various duties such as programming, which in other
centres would be performed by a teacher, then fall to that qualified child care worker. The evidence also shows that the training which a qualified child care worker must undertake to perform that work, may give two years advanced standing, if a three year teaching degree is pursued. The awards which apply to teachers also recognise experience as a child care worker when teachers are classified under those awards.

It was ultimately common ground between the parties that there were serious difficulties in drawing comparisons between the work of child care workers and those employed in other male dominated industries, in considering the undervaluation claim. The evidence showed beyond doubt, that the duties and responsibilities of child care workers, who work in many of these centres with teachers and who carry out responsibilities of teachers when a teacher is not employed, are similar to those of teachers, particularly in the case of qualified child care workers.

These conclusions accord with the views to which Glynn J came in the Pay Equity Inquiry.

We have come to the view that while the duties and responsibilities of qualified child care workers for the care and education of the children attending the centres at which they are employed, are similar to those of teachers, the quality of their work is, nevertheless, different and that the similarities established are less significant for non-qualified staff. We accept the evidence that the employment of a teacher with teacher training, has an impact on the educational experience which centres are able to offer children, given the training which the teacher brings to these duties. The training to diploma level, which qualified child care workers undertake, also has an impact on the work which they perform, by way of comparison to untrained staff. On the evidence, it is this learning which has an impact upon the quality of the work which child care workers, qualified child care workers and teachers respectively produce. This conclusion has been reflected in the classification structure and rates of pay which we have fixed for this award.

The evidence also demonstrated the effect of changed work requirements upon child care workers since 1989, with the impact of innovations such as the way in which children attending these centres are taught, having regard to developments in research into how the human brain develops and how children learn.

In those centres where no teachers at all are employed, the changes identified have undoubtedly had a greater impact on the qualified child care workers, who have direct responsibility for the matters which in larger centres fall upon teachers. Nevertheless, we are satisfied, overall, that there has been change which has had an impact, to varying degrees, upon child care workers generally.

This industry has come under increasingly close supervision and scrutiny of government, as the result of both changed funding arrangements and views taken as to the way in which children require education and society’s protection. We are satisfied that this has not only affected those operating businesses in the industry, whether for profit or not, but also those who work within it.

The evidence showed significant and ongoing changes in the regulatory environment. There was no issue that changes had occurred. The point of contention was how significant the changes were for child care workers generally and the unqualified staff in particular, with the employers’ view generally being that the impact had been on owners, operators and licensees,
more than on employees, with most impact on authorised supervisors and co-ordinators and less impact on qualified staff and none for those who are unqualified. We were unable to accept those submissions on the evidence provided to the Commission in these proceedings.

26 We are well satisfied that the changes which have occurred in the approach adopted by government to the regulation of the industry, as all parties recognised, have had a general impact on the work of child care workers, with more significant implications for qualified staff, authorised supervisors and co-ordinators, particularly in the smaller centres, where no teachers are employed.

27 These changes have taken place at both State and federal level, with ongoing alterations in self assessment, accreditation and registration regimes and programmes. This has had implications, not only for the work itself, but also for the resulting responsibilities which fall upon child care workers. While ultimate responsibility for these matters falls upon licensees and authorised supervisors, there can be no question that they have also impacted upon the work which child care workers are required to perform. These responsibilities are real. The evidence suggested that failures can have significant consequences for the financial viability of centres.

28 We have reached the same conclusions in relation to child protection legislation. Given the requirements of the legislation, there is no doubt that compliance with these statutory obligations falls on all child care workers and has had an impact on the work which they perform, even if ultimate responsibility for ensuring compliance with these obligations at a centre falls upon licensees and authorised supervisors.

29 The evidence also established significant differences in the work which those employed in pre-schools and long day care centres are required to perform, given their different hours of operation. This is reflected in the increases which we have awarded, which result in rates of pay 4 per cent higher for those employed in long day care centres. That differential is one which also applies, by consent, to teachers employed in this industry.

30 The classification structure and rates of pay which we have awarded are:

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These rates will be phased in over time, as follows:

From the beginning of the first pay period commencing on or after 7 March 2006 — 4 per cent.

1 September 2006 — 4 per cent, or the balance of the remaining increase, if less than 4 per cent.

1 March 2007 — 4 per cent, or the balance of the remaining increase, if less than 4 per cent.

1 September 2007 — 4 per cent, or the balance of the remaining increase, if less than 4 per cent.

1 March 2008 — The balance of any remaining increase.

We have also awarded various changes in conditions for reasons explained in the decision.

PAUL C MOORHOUSE
PAY SCALE SUMMARY

derived from the

Miscellaneous Workers' Kindergartens and Child Care Centres,
& C. (State) Award [AN120347 – NSW]

Published 02Aug07

This pay scale summary was developed by the Workplace Authority and is derived from the
above award as it was on 26 March 2006 as adjusted by the Australian Fair Pay Commission.
This summary incorporates increases determined by the Australian Fair Pay Commission with
effect commencing from the employee's first pay period on or after 1 October 2007.

Inquiries about the application of the Australian Fair Pay Commission's decision should be
referred to the Workplace Infoline on 1300 363 264.

Coverage

This pay scale applies in NSW to employees employed in or in connection with child care,
child minding centres, day nurseries and pre-school kindergartens, excluding the County of
Yancoolina.

The following employees are excluded from coverage of this pay scale:

- Persons employed as teachers or teachers in training but not excepting unqualified
  teachers aides, helpers or assistants;
- Persons employed as teachers aides in pre-school kindergartens and nurseries within
  the grounds of public schools;
- Persons employed by the NSW Department of Corrective Services;
- Drivers of vehicles;
- Employees of all city, municipal, shire and county councils;
- Employees in child minding centres in public hospitals; and
- Employees within the jurisdiction of the following Industrial Committees:
  - Saraton Building Training Suites Private Hospital Employees (State); or
  - Trained Nurses, &c. Other Than In Hospitals, &c, (State); and Voluntary Care
    Association Employees (State).

For detail of the coverage provisions see the 26 March 2006 version of the award.
### Wages

Table 1C - New Wages - Child Care Classifications In Long Day Care

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Pay Scale Summary - Miscellaneous Workers’ Kindergartens and Child Care Centres, B.C. (State) Award [AN120347 - NSW]
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**Co-Ord – Unqualified Small – Long Day Care**

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<td></td>
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</tr>
<tr>
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<tr>
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<td></td>
</tr>
</tbody>
</table>

Pay Scale Summary – Miscellaneous Workers’ Kindergartens and Child Care Centres, &C. (State) Award [AN120347 – NSW]
Table 1D - New Wages - Child Care Classifications In Pre-Schools

### Co-ordinator - Qualified Large - Long Day Care

<table>
<thead>
<tr>
<th>Level</th>
<th>Step 1</th>
<th>Step 2</th>
<th>Step 3</th>
<th>Step 4</th>
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<tbody>
<tr>
<td>Co-Ord Qual Lge</td>
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<td>L3</td>
<td>L3</td>
<td>L4</td>
</tr>
<tr>
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<tr>
<td>Co-Ord Qual Lge</td>
<td>18.5760</td>
<td>19.3179</td>
<td>19.90</td>
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<tr>
<td>Co-Ord Qual Lge</td>
<td>18.1289</td>
<td>18.8539</td>
<td>19.43</td>
<td>20.19</td>
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<tr>
<td>Co-Ord Qual Lge</td>
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<td>19.1129</td>
<td>19.69</td>
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<td>19.3179</td>
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</table>

### Miscellaneous Workers' Kindergartens and Child Care Centres, &C. (State) Award

### Pay Scale Summary - Miscellaneous Workers' Kindergartens and Child Care Centres, &C. (State) Award [AN120347 - NSW]
<table>
<thead>
<tr>
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### Assistant Co-ordinator - Pre-schools

<table>
<thead>
<tr>
<th>ACCWQ</th>
<th>Asst Co-ord</th>
<th>Rate at L1</th>
<th>Rate at L2</th>
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<th>Rate at L6</th>
<th>Rate at L7</th>
<th>Rate at L8</th>
<th>Rate at L9</th>
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<tbody>
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### Assistant Co-ordinator Qualified - Pre-schools

<table>
<thead>
<tr>
<th>Co-Ord Small</th>
<th>Co-ord OOSH</th>
<th>Rate at L1</th>
<th>Rate at L2</th>
<th>Rate at L3</th>
<th>Rate at L4</th>
<th>Rate at L5</th>
<th>Rate at L6</th>
<th>Rate at L7</th>
<th>Rate at L8</th>
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### Co-ordinator - OOSH

<table>
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<th>Co-Ord Small</th>
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<th>Rate at L2</th>
<th>Rate at L3</th>
<th>Rate at L4</th>
<th>Rate at L5</th>
<th>Rate at L6</th>
<th>Rate at L7</th>
<th>Rate at L8</th>
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<th>Rate at L10</th>
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</thead>
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<td>15.5589</td>
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<td>16.8900</td>
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<td>18.29</td>
<td>18.99</td>
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<td>20.05</td>
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### Co-ordinator Pre-school (small)

<table>
<thead>
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<th>Rate at L3</th>
<th>Rate at L4</th>
<th>Rate at L5</th>
<th>Rate at L6</th>
<th>Rate at L7</th>
<th>Rate at L8</th>
<th>Rate at L9</th>
<th>Rate at L10</th>
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</thead>
<tbody>
<tr>
<td>1</td>
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<td>16.8503</td>
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<td>16.5032</td>
<td>17.1632</td>
<td>17.88</td>
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### Co-ordinator Pre-school (large)

<table>
<thead>
<tr>
<th>Co-Ord Large</th>
<th>Co-Ord Pre-Sch</th>
<th>Rate at L4</th>
<th>Rate at L5</th>
<th>Rate at L6</th>
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<td>1</td>
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<td>17.23</td>
<td>17.89</td>
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<tr>
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<td>18.24</td>
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<td>19.09</td>
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<td>17.88</td>
<td>18.57</td>
<td>19.28</td>
<td>19.42</td>
<td>22.16</td>
</tr>
</tbody>
</table>
Pay scales contain, among other things, rate provisions determining basic periodic rates of pay. However, wage increases in a pre-reform award that were expressed to take effect after 27 March 2006 ('future wage increases') are not preserved in a pay scale unless those increases in the pre-reform award were determined wholly or partly on the ground of work value change or pay equity (see section 208(4) of the Workplace Relations Act 1996).

The future wage increases in the pre-reform award appear to have been determined on the ground of work value or pay equity. Accordingly, the future wage increases are preserved in the pay scales derived from the pre-reform award.

**Other information - wages**

 whichever of the following conditions exist:

- The work value or pay equity of the employee has not been taken into account in the determination of the award;
- The work value or pay equity of the employee has been taken into account in the determination of the award, but the employee was not entitled to be paid for the work value or pay equity.

<table>
<thead>
<tr>
<th>Classification</th>
<th>Basic hourly rate 1 Oct 2007</th>
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</thead>
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<tr>
<td>Support Worker</td>
<td>14.92</td>
</tr>
<tr>
<td>Support Worker (Qualified Cook)</td>
<td>15.28</td>
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</table>
Casual Rates

<table>
<thead>
<tr>
<th>Loading/Badging</th>
<th>Loading</th>
</tr>
</thead>
<tbody>
<tr>
<td>relevant basic hourly rate</td>
<td>15%</td>
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</tbody>
</table>

Classifications

For detail of classification descriptions see the 26 March 2006 version of the award.

Juniors

Child Care Workers

<table>
<thead>
<tr>
<th>Year/Stage</th>
<th>Rate</th>
<th>Rate based on</th>
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<tbody>
<tr>
<td>Under 17 years of age</td>
<td>70%</td>
<td>appropriate adult rate of pay specified for the classification under which the junior is engaged</td>
</tr>
<tr>
<td>At 17 years of age</td>
<td>80%</td>
<td>appropriate adult rate of pay specified for the classification under which the junior is engaged</td>
</tr>
<tr>
<td>At 18 years of age</td>
<td>90%</td>
<td>appropriate adult rate of pay specified for the classification under which the junior is engaged</td>
</tr>
<tr>
<td>At 19 years of age</td>
<td>100%</td>
<td>appropriate adult rate of pay specified for the classification under which the junior is engaged</td>
</tr>
</tbody>
</table>

Other information - juniors

Junior employees employed otherwise than as Junior Child Care Workers shall be paid the appropriate adult rate of pay.

Trainees
Trainee rates of pay are not covered by this pay scale.

Apprentices
Apprentice rates of pay are not covered by this pay scale.

Frequency of payment
Wages shall be paid weekly or fortnightly in ordinary working time.

Note that the frequency of payment provisions in this pay scale do not apply to employees who are covered by a workplace agreement or contract of employment containing frequency of payment provisions that provide for payments in respect of periods of one month or less. Such employees are guaranteed payment in accordance with the frequency of payment provisions in the workplace agreement or contract of employment.
Pay Scale Summary – Background

This summary sets out basic classification wages, and associated provisions, derived from the 26 March 2006 version of the award. Other conditions of employment (including allowances, penalties and loadings) may be contained in an award, workplace agreement, contract of employment, or Notional Agreement Preserving State Awards.

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, provided that the employee is correctly classified and paid for each hour worked in accordance with the pay scale. The keeping of time and wages records and the issuing of payslips is required by law and will be needed to demonstrate to the Workplace Ombudsman compliance with this pay scale.

This pay scale summary provides information about the effect of Australian Fair Pay Commission decisions. Any questions concerning the summary, or the entitlements of employees under this pay scale or the related award should be directed to the Workplace Infoline on 1300 363 264.

Transitional Arrangements

Despite the coverage provisions of this pay scale, an employee or employer may not be covered by this pay scale while the employee or employer is covered by one of the following:

• a pre-reform federal certified agreement
• a pre-reform federal Australian Workplace Agreement
• an individual or collective preserved State agreement
• a transitional award (for employers in the federal system not covered by WorkChoices, these will apply for up to 5 years from 27 March 2006).

If you require assistance with any provisions of this pay scale please call Workplace Infoline on 1300 363 264

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.
Extracts from relevant pre-reform wage instruments that contain formulas for the calculation of hourly rates of pay.

NATIONAL BUILDING AND CONSTRUCTION INDUSTRY AWARD 2000

18.3 Hourly Rate Calculation

18.3.1 Tradesperson and labourer employees - follow the job loading

(a) The calculation of the hourly rate shall take into account a factor of eight days in respect of the incidence of loss of wages for periods of unemployment between jobs.

(b) For this purpose the hourly rate, calculated to the nearest cent, (less than half a cent to be disregarded) shall be calculated by multiplying the sum of the appropriate amounts prescribed in 18.1.1, 24.1, 24.2, 24.3 and 24.5.2 of this award, by fifty-two over fifty point four (52/50.4) rounded to the nearest cent, adding to that subtotal the amount prescribed in 18.2 hereof and dividing the total by thirty-eight. Provided that in the case of a carpenter-diver, the divisor shall be thirty-one, and for refractory bricklayers and their assistants the allowance contained in 18.10 hereof shall be added to the hourly rate.

BUILDING AND CONSTRUCTION INDUSTRY (NSW) STATE AWARD

18.3 Hourly Rate Calculation - Follow the Job Loading

The calculation of the hourly rate for employees other than apprentices shall take into account a factor of eight days in respect of the incidence of loss of wages for periods of unemployment between jobs.

For this purpose the hourly rate, calculated to the nearest cent (less than half a cent to be disregarded) shall be calculated by multiplying the sum of the appropriate amounts prescribed in Clauses 18.1.1(a) - Weekly Rates, Clause 24.1 - Industry Allowance, Clause 24.2 - Underground Allowance (where applicable), Clause 24.3 - Tool Allowance (where applicable) and Clause 18.7 - Foreperson and Sub-Foreperson Allowance where applicable, of this award by fifty-two over fifty point four, rounded to the nearest cent, adding to that subtotal the amount prescribed in 18.2 - Special Allowance herein and dividing the total by thirty-eight, provided that in the case of a carpenter/diver, the divisor shall be thirty-one.

18.1.1 Wage Rates - Tradespersons and Labourers

(a) Wage Rates - New Classification Structure

Subject to subclause (c) of this clause, the following amounts shall be applied where appropriate for the purposes of the calculation of the hourly rate under 18.3 of this award.
**BUILDING EMPLOYEES MIXED INDUSTRIES (NSW) STATE AWARD**

16.1 Carpenters, Joiners and Bricklayers

16.1.1 The ordinary weekly wage for carpenters, joiners and bricklayers shall be as set out in Table 1 - Wages, of Part B, Monetary Rates.

16.1.2 A carpenters, joiners and bricklayers shall be paid the applicable tool allowance as set out in Table 1 - Wages of Part B. The tool allowance shall be payable for all purposes of this award.

16.2 Plumbers and Gasfitters

16.2.1 Journeyperson Plumber

(a) The hourly rate for journeyperson plumber shall calculated as follows:

(i) By multiplying the minimum rate as set out in said Table 1 by 52/48.4 to load the wages to provide for ten public holidays and two weeks' sick leave per annum.

(ii) By adding to that amount the supplementary payment, and the state wage case adjustments as set out in Table 1.

(iii) By adding to that amount the tool allowance as set out in Table 1.

(iv) Dividing that amount by 38 (calculated to the nearest cent) to reduce it to an hourly rate; provided that where the calculation goes to the nearest half cent, then the exact sum is the hourly rate.

(v) Add the registration allowance as set out in Item 1 of Table 2.

(1) This allowance shall be paid for all purposes of this award with the exception of Clause 15 - Overtime.

(2) During overtime the registration allowance shall be paid as a flat rate and not to be subject to overtime penalties.

16.2.2 Ships Plumber

The ordinary hourly rate for a Ship's Plumber shall be the hourly rate for a journeyperson plumber, plus the amount as set out in Item 2 of Table 2.

16.2.3 Drainer

The ordinary hourly rate for a Drainer shall be the hourly rate for a journeyperson plumber less the amount as set out in Item 2 of Table 2.
If, within three months after the employee’s employment on the terms and conditions of this part, the employee’s employment shall have terminated for any other cause other than misconduct or the employee’s voluntary act or shall cease to be in continuous employment, the employee shall be paid for the total hours actually worked by the employee from the commencement of the employee’s employment on the terms and conditions of this subclause until the termination of such employment as aforesaid or its ceasing to be continuous employment, at the appropriate rates provided in paragraph (1) of this subclause, less a deduction of the industry allowance as set out in Item 58 of Table 2 which deduction, calculated on an hourly basis, is as set out in the said Item 58.

Employment shall not cease to be continuous within the meaning of this subclause if no work or pay is provided for the employee or in respect of such days as are holidays pursuant to the provisions of this award or in the event of the employee being absent from their work on account of sickness or by their own voluntary act.

16.3 Painters and Signwriters

16.3.1 The ordinary hourly rate of wages for a Painter shall be calculated as follows:

(a) Multiplying the minimum rate for a Painter as set out in Table 1 by 52/48 to load the wage to provide for payment of ten public holidays and ten days' sick leave per annum, or

(b) Where an employer pays:

(i) the employees ten days' sick leave per annum on full pay by multiplying the minimum rate for a Painter by 52/50.

(ii) the employees for all public holidays, although not worked, by multiplying the minimum rate for a Painter by 52/50.

(iii) the employee for all public holidays, although not worked, and allows the employees ten days' sick leave per annum on full pay by paying the minimum rate.

The provisions of this subclause shall not apply to any employer unless he gives written notice, by certified mail, to the Industrial Registrar and the State Secretary of the CFMEU General and Construction Division that the Employer elects to be bound by this subclause. The written notice must be provided within 28 days.

(c) By adding to the sum calculated in (a) or (b) above the Supplementary Payment as set out and the State Wage Case adjustment as set out in Table 1.

(d) By adding to the amount calculated in (c) the Tool Allowance as set out in Table 1,
To determine the hourly rate dividing the amount determined in (d) by 38.

16.3.2 Signwriters

The ordinary hourly rate for a Signwriter shall be the appropriate hourly rate for a Painter plus the amount as set out in Item 2 of Table 2.

16.3.3 Marbler and Grainer on other than Ship Work

(a) The ordinary hourly rate for a Marbler and Grainer, not working on Ship Work shall be the appropriate hourly rate for a Painter plus the amount as set out in Item 2 of Table 2.

(b) This rate shall be payable only to employees whilst engaged on the work of marbling and/or graining.

16.3.4 Ship Painter

The ordinary hourly rate for a Ships Painter shall be the appropriate hourly rate for a Painter plus the amount as set out in Item 2 of Table 2.

16.3.5 Casual Ships Painter

(a) The a minimum payment for a Casual Ship’s Painter shall be for four hours’ employment. The hourly rate shall be calculated as follows:

(i) add the minimum rate as set out in Table 1 and the amount as set out in Item 1 of Table 2 for tools;

(ii) divide that rate by 38;

(iii) By adding to the above amount 21.5 per cent plus the amount as set out in Item 11.

16.3.6 Signwriter, Grainer and Gilder on Ship Work.

The ordinary hourly rate for a Signwriter, Grainer and/or Gilder on Ship Work, whilst engaged on such special work, shall be the appropriate hourly rate for a Painter plus the amount as set out in Item 3 of Table 2.

16.3.7 Artworker

(a) The ordinary hourly rate for a Artworker Grade 2 shall be the appropriate hourly rate for a Painter plus the amount as set out in Item 2 of Table 2.

(b) The ordinary hourly rate for a Artworker Grade 1 shall be the appropriate hourly rate for a Painter plus the amount as set out in Item 2 of Table 2.
(c) Base Painter - Art, shall be paid the appropriate rate prescribed for a painter under this award.

(d) Trainee Artworker shall be paid the appropriate rate of an apprentice.

16.4 Builders' Labourers

16.4.1 A Builders Labour shall be paid the rate as set out Table 1 of Part B.

16.4.2 Disability Allowance

In addition to the minimum rates of pay prescribed in this subclause, an employee engaged on "maintenance" as defined, shall be paid a disability allowance at the rate set out in Item 41 of Table 2.

16.4.3 Where an employee is engaged on work other than "maintenance", as defined, such allowance shall be increased by an additional amount as set out in Item 41 when so engaged.

16.5 Apprentices

16.5.1 Apprentices shall be paid the rates as prescribed in Table 1 of Part B of this award.

16.6 Notation - Supplementary Payment

(a) The supplementary payment prescribed in this subclause is in substitution for any overaward payment, as defined hereunder, which would otherwise have been paid.

(b) Overaward payment is defined as the amount (whether it be termed "overaward payment", "attendance bonus", "service increment" or any term whatsoever) which an employee performing 38 hours of ordinary work would receive in excess of the ordinary weekly rate prescribed in this award. Such payment shall exclude overtime, shift allowances, penalty rates, disability allowances, special rates, fares and travelling time allowances and any other ancillary payments of a like nature prescribed by this award.
PLUMBERS AND GASFITTERS (NSW) STATE AWARD

6. WAGES

Building Industry

2. (a) Journeyman Plumber (other than Ship’s Plumber)

The ordinary hourly rates of wages for a journeyman plumber shall be calculated as follows:

(i) By multiplying the total sum of the base weekly rate as set out in Table 1 - Rates of Pay, of Part B, Monetary Rates, plus the industry allowance and supplementary payment as set out in Item 1 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, plus the arbitrated safety net adjustments by 52 over 48.8 to load the wages to provide payments of 1.6 weeks to follow the job and 1.6 weeks inclement weather.

(ii) By adding to the sum calculated in subparagraph (i) the special allowance as set out in Item 1 of Table 2 and dividing the resultant sum by 38 to reduce it to an hourly rate calculated to the nearest cent, less than half a cent to be disregarded.

(iii) The ordinary rate calculated in accordance with subparagraphs (i) and (ii) is an amount per hour as set out in Table 1, plus a registration allowance per hour as set out in Item 1 of Table 2. This allowance shall be paid for all purposes of the award with the exception of Clauses 5 - Night Shift and 20 - Overtime, in which cases it shall be paid as a flat rate and not be subject to penalty addition.

(b) The ordinary hourly rate of wages for the undermentioned classifications shall be calculated by deducting from the hourly rate specified in paragraph (iii) of subclause (a) of this clause for a journeyman plumber the amount hereunder:

Drainer

An amount set out in Item 1 of Table 2.

(c) Ship’s Plumber

The ordinary hourly rate of wages for a Ship’s Plumber shall be calculated as follows:

(i) By multiplying the total sum of the base weekly rate as set out in Table 1 plus the industry allowance plus the tool allowance and a supplementary payment as set out in the said Table 1 plus the arbitrated safety net adjustments by 52 over 48.8 to load the wages to provide payments of 1.6 weeks to follow the job and 1.6 weeks inclement weather.
(ii) By adding to the sum calculated in subparagraph (i) special allowance as set out in Item 1 of Table 2 and dividing the resultant total sum by 38 to reduce it to an hourly rate to be calculated to the nearest cent, less than half a cent to be disregarded.

(iii) The ordinary rate calculated in accordance with paragraphs (i) and (ii) of this subclause is an amount per hour as set out in Table 1 plus a registration allowance as set out in Item 2 of Table 2.

(iv) The supplementary payment as set out in Item 2 is compensation for the non-incidence of over-award payments in the building industry.

(a) The special allowance as set out in Table 2 where mentioned is compensation for:

   (a) excess travelling time incurred by employees in the building industry;

   and

   (b) the removal of loadings consequent upon the introduction of this award.

(c) Apprentices

(i) The minimum rates of wages for indentured apprentices shall be as follows:

   Indentured Apprentices

   For apprentices employed by employers bound by this award, other than those employed on ship’s plumbing, the wage rates shall apply as set out in Table 1 - Rates of Pay of Part B, Monetary Rates.

   NOTE: The special allowance variation will follow principles adopted in the special allowance clause of this award.

(ii) The minimum rate of wages for trainee apprentices shall be as set out in the said Table 1.

   NOTE: The special allowance variation will follow principles adopted in the special allowance clause of this award.

   The above rates include all arbitrated safety net adjustments prescribed in Clause 6 - Wages.
(iii) (a) In the case of apprentices engaged in ship repairs, the sum as set out in Item 2 of Table 2 - Other Rates and allowances, of the said Part B, shall be paid in addition to the base rate payable per week. Provided that where an apprentice is, for a period of half a day or longer, away from his/her place of employment for the purpose of receiving tuition, the amount prescribed herein shall be decreased proportionately.

(b) An apprentice for whom a term of pre-apprenticeship has been approved shall be paid at the rate for a first year apprentice for the first six months of his/her apprenticeship and shall then be paid at the rate fixed for a second-year apprentice for the following 12 months; the third year rate for the 12 months period then following and the 4th year rate for the remaining period of the apprenticeship.

NOTE: Apprentices may also be entitled to additional amounts in respect of tool allowance, fares, accident pay, overtime and other special rates, including rates for work on ship's plumbing, as provided in this award.

(c) All wages shall be on a weekly basis, provided that it shall be an implied term in any contract of apprenticeship that an employer shall be at liberty to deduct from the weekly wage of an apprentice an amount proportionate to the time lost by an apprentice arriving late for work.
BUILDING AND CONSTRUCTION INDUSTRY STATE AWARD: AFPC CALCULATION PROBLEMS

Note: The calculations below use figures applicable at the time of the first AFPC decision.

Clause 18.3 of the award prescribes a formula for calculating the hourly rates.

18.3 Hourly Rate Calculation - Follow the Job Loading

The calculation of the hourly rate for employees other than apprentices shall take into account a factor of eight days in respect of the incidence of loss of wages for periods of unemployment between jobs.

For this purpose the hourly rate, calculated to the nearest cent (less than half a cent to be disregarded) shall be calculated by multiplying the sum of the appropriate amounts prescribed in Clauses 18.1.1(a) - Weekly Rates, Clause 24.1 - Industry Allowance, Clause 24.2 - Underground Allowance (where applicable), Clause 24.3 - Tool Allowance (where applicable) and Clause 18.7 - Foreperson and Sub-Foreperson Allowance where applicable, of this award by fifty-two over fifty point four, rounded to the nearest cent, adding to that subtotal the amount prescribed in 18.2 - Special Allowance herein and dividing the total by thirty-eight, provided that in the case of a carpenter/diver, the divisor shall be thirty-one.

Explanation

Add the sum of the applicable amounts:

\[ \text{18.1.1(a) [the weekly amounts] + 24.1 [Industry Allowance $21.70] + 24.2 [Underground Allowance] + 24.3 [Tool Allowance from table] + 18.7 [Foreperson and Sub-foreperson Allowance]} \]

Multiply by:

\[ \frac{52}{50.4} \]

Add:

\[ \text{18.2 [Special Allowance $7.70]} \]

Divide by:

\[ 38 \text{ or 31 fro the Carpenter/Diver classification} \]

Examples 1 and 2 demonstrate the problems in applying the formula to the AFPC decision. That is, it is unclear as to at which point the AFPC increase should be applied, either to the weekly figure (divided to get an hourly rate) prescribed in 18.1.1(a) or to the hourly figure that is the result of using the formula.
Example 1: Adding AFPC increase at the end of the formula

Using the Carpenter/Diver classification and the first AFPC increases

Add the sum of the applicable amounts:

\[
18.1.1(a) \text{ [the weekly amounts $682.60]} + 24.1 \text{ [Industry Allowance $21.70]} + 24.2 \text{ [Underground Allowance N/A]} + 24.3 \text{ [Tool Allowance $23.30]} + 18.7 \text{ [Foreperson and Sub-foreperson Allowance N/A]}
\]

\[
682.6 + 21.7 + 23.3 = 727.6
\]

Multiply by:

\[
52/50.4 \quad 727.6 \times (52/50.4) = 750.70 \quad \text{*Rounded in accordance with the formula}
\]

Add:

\[
18.2 \text{ [Special Allowance $7.70]}
\]

\[
750.7 + 7.70 = 758.40
\]

Divide by:

38 or 31 for the Carpenter/Diver classification

\[
758.40 / 31 = 24.46 \quad \text{*Rounded in accordance with formula}
\]

Add AFPC increase

\[
24.46 + 0.58 = 25.04 \quad \text{* Rounded in accordance with E1 of the AFPC Wage Setting Decision No. 1/2006}
\]

Example 2: Adding AFPC increase at the start by dividing the weekly amount and adding to that.

Using the Carpenter/Diver classification and the first AFPC increases

Divide weekly amount by 38 to obtain hourly rate:

\[
682.6 / 38 = 17.96315789
\]

Add AFPC increase:

\[
17.96315789 + 0.72 = 18.68
\]

New weekly Amount:

\[
18.68 \times 38 = 709.84
\]
Add the sum of the applicable amounts:

18.1.1(a) [the weekly amounts $709.84] + 24.1 [Industry Allowance $21.70] + 24.2 [Underground Allowance N/A] + 24.3 [Tool Allowance $23.30] + 18.7 [Foreperson and Sub-foreperson Allowance N/A]

709.84 + 21.7 + 23.3 = 754.84

Multiply by:

52/50.4

754.84 * (52/50.4) = 778.80 *Rounded in accordance with the formula

Add:

18.2 [Special Allowance $7.70]

778.80 + 7.70 = 786.50

Divide by:

38 or 31 for the Carpenter/Diver classification

786.50 / 31 = 25.37 *Rounded in accordance with formula