Submission of the
HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION
to the
AUSTRALIAN FAIR PAY COMMISSION
for the
2008 MINIMUM WAGE REVIEW
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A. INTRODUCTION

1. The Human Rights and Equal Opportunity Commission (HREOC) makes this submission to the Australian Fair Pay Commission (AFPC) for the 2008 Minimum Wage Review.

2. HREOC is Australia’s national human rights institution.¹

3. HREOC makes this submission to the AFPC for consideration in determining the 2008 Minimum Wage Decision in relation to minimum wages for employees with disability.

4. HREOC provides this information to assist the AFPC to achieve its objective: to promote the economic prosperity of the people of Australia.

5. HREOC provides information from the perspective of people with disability relevant to the AFPC’s wage setting functions and objectives:

   - the capacity for the unemployed and low paid to obtain and remain in employment;
   - employment and competitiveness across the economy;
   - providing a safety net for the low paid; and
   - providing minimum wages for junior employees, employees to whom training arrangements apply and employees with disabilities that ensure those employees are competitive in the labour market

6. HREOC also provides information in relation to the impact of the AFPC’s July 2007 Minimum Wage Decision in relation to the economic prosperity objective.

7. HREOC notes for consideration by the AFPC Article 27 (1) of the UN Convention on the Rights of Persons with Disabilities with regard to work and employment.² The Convention was drafted with significant support and contribution by the Australian Government. The Australian Government signed the Convention on 30 March 2007, the day it opened for signature:

   Article 27 - Work and Employment

   1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the


realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

a. Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;

b. Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;

c. Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;

d. Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;

e. Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;

f. Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one’s own business;

g. Employ persons with disabilities in the public sector;

h. Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;

i. Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;

j. Promote the acquisition by persons with disabilities of work experience in the open labour market;

k. Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

B. SUMMARY

8. With regard to the 2007 Minimum Wage Decision, HREOC welcomed the decision by the AFPC to increase the Special Federal Minimum Wage (Special FMW) by the same amount as the standard Federal Minimum Wage (standard FMW) so that the two wages are equivalent. This decision acknowledges that people with disability are entitled to receive a wage commensurate with their experience, skills, training and qualifications and the equal contribution made by employees with disability to the Australian workforce.
9. HREOC urges the need for the AFPC to consider the links between poverty and disability and the high costs associated with participation in employment for many people with disability when adjusting the standard FMW and Special FMW.

10. HREOC notes the lack of data available to determine the additional disability-related costs borne by people with disability to participate in employment and the lack of a government guarantee to ensure that people with disability will not be financially worse off if they are forced to enter the workforce.

11. HREOC is concerned that some wage assessment tools available to business services to assess productivity and determine wages may produce different wage outcomes for people performing the same work.

12. HREOC also notes the current discrepancy in wage outcomes in Business Services as a result of the availability of the minimum weekly payment available to employees with disability on the Supported Wage System (SWS) which is not available to other employees with disability working in Business Services assessed with other wage assessment tools.

13. HREOC recommends:

• Recommendation One: Due to the high costs associated with disability, and with participation in employment in particular, and the close link between disability and poverty, the standard FMW should be increased to reflect increases in the cost of living as a safety net for the low paid in Australia’s workforce.

• Recommendation Two: In the event of an increase to the standard Federal Minimum Wage (standard FMW), the Special Federal Minimum Wage (Special FMW) should be adjusted to the same amount. As in the 2007 Minimum Wage Decision, the Special FMW should be set at an amount equal to the standard FMW so that employees with disability are not discriminated against on the basis of their disability. People with disability are entitled to receive a wage commensurate with their experience, skills, training and qualifications like all other workers.

• Recommendation Three: The AFPC should research the economic costs for people with different disabilities to enter and remain in the open workplace. This research should be overseen by a reference group which includes peak disability groups and employers. HREOC would welcome the opportunity to be involved in this process.

• Recommendation Four: The AFPC should examine a system to ensure fairness and consistency across wage assessment tools so that people performing the same job in different business services are paid an equivalent wage, and a fair wage, regardless of place of employment.

• Recommendation Five: HREOC recommends the introduction of a minimum weekly payment across all wage assessment tools in Business
Services identical to the minimum weekly payment available to employees on the Supported Wage System (SWS). This will ensure that all employees with disability are guaranteed a minimum weekly payment regardless of place of work or assessment tool used to calculate wages.

C. Continuing high unemployment rates for people with disability

14. Currently, Australians without disability are enjoying a record low unemployment rate of 4.3% (Australian Bureau of Statistics, January 2008).³

15. There is no evidence however that the current decrease in unemployment has flowed to people with disability.

16. Limited data is available about the current or changing employment rate of people with disability in the Australian labour market. Information about disability is not collected by the Australian Bureau of Statistics in labour market surveys and the Department of Education, Employment and Workplace Relations also does not release or publish any information in relation to employment of people with disability.

17. Recent research, including the recent study by the OECD, and reports from the disability, employment services and welfare sectors about employment and people with disability, suggests very little has changed in the past five years since the Australian Bureau of Statistics conducted the ‘Survey of Disability, Ageing and Carers’ in 2003. The OECD study suggests that the situation is deteriorating:⁴

A major finding for Australia is the low and falling level of income of people with disability (measured as total income of all household members adjusted for household size), which is more than one-third lower than for those without disability, in turn leading to a high poverty risk. This problem partly results from the equally low and falling rate of employment of people with disability, of only 40%, despite a tight labour market.

18. In 2003 the ABS estimated that the average unemployment rate for people with disability was 8.6%. However, the unemployment rate varied according to disability type:

- 9.3% Sensory and speech
- 18% Intellectual disability
- 7.4% Physical restriction
- 19.5% Psychological

19. Other research suggests the unemployment statistics for people with disability are even higher than those estimated by the ABS. For example, as indicated above, in 2003 the ABS stated that the unemployment rate for people with sensory and speech impairment was 9.3%.\textsuperscript{5} However, a recent survey conducted by Vision Australia indicates that the figure is considerably higher:\textsuperscript{6}

69% of people of working age who are blind or have low vision are not in paid employment. Even if those who are identified as unemployed for reasons of retirement, education, homemaking or as a lifestyle choice are excluded, those who are blind or have low vision are four and a half times more likely to be unemployed than the national average. That is, 63% of the potential labour force with a vision impairment are unemployed, compared to 14% for the population as a whole.

20. What is known however, is that while people with disability represent a significant proportion of Australia’s working age population, they participate in the workforce at lower rates, they are less likely to be employed when they do attempt to participate, and they will earn less if they do get a job.\textsuperscript{7}

21. Women with disability are less likely to be in the workforce than men with disability.\textsuperscript{8} For men with disability, the decrease in full time employment accounts for most of the decrease in labour force participation. For women, disability has negative affects on both full time and part-time employment.\textsuperscript{9}

22. The Productivity Commission further notes the difficulties for people with disability to make the transition from unemployment to permanent employment. The study by Productivity Commission into the role of non-traditional work as a stepping stone to permanent employment indicates that for people with disability, brief entries into the labour market with casual work are not likely to lead to permanent employment (and hence potential economic stability), but rather to churning between casual jobs or unemployment again.\textsuperscript{10}

\textit{Among those moving from non-traditional employment to ongoing employment, econometric analysis of casual employees suggests that those who work full-time, or would prefer to work more hours, have a}

\textsuperscript{5} Australian Bureau of Statistics. Disability, Ageing and Carers Survey, Australia 2003. Disability groups by labour force status and full-time/part-time status, persons living in households aged 15-64 years (data provided to HREOC by special request, 15 September 2006).
\textsuperscript{10} Productivity Commission (2006). \textit{The role of non-traditional work in the Australian labour market}. Page xxiv. See also: ACOSS (2007). \textit{The role of further education and training in Welfare to Work policies}. 
higher probability of making this transition, relative to other casual employees. By contrast, casual employees with a disability, a long unemployment history, or an unemployed partner have a higher probability of reverting to not working.

23. Anglicare Victoria recently reported that most people who obtain work after Job Network intensive assistance “remain in low-paid, part-time and casual employment”\(^\text{11}\).

24. Anglicare Victoria further notes that a drop in unemployment does not necessarily result in economic prosperity:\(^\text{12}\)

\[ ... [T]he official measure of unemployment in Australia counts as unemployed those people that have worked less than one hour in the previous week. Hence, a drop in unemployment does not necessarily mean that households are better off. \]

D. LINK BETWEEN DISABILITY AND POVERTY

25. The link between disability and poverty is well established.\(^\text{13}\) This is due to a combination of factors which include: lower workforce participation rates compared to people without disability; high unemployment rates (as high as 20% for certain disability groups); lower wages when employed; and, significant costs associated with disability.

26. Anglicare Tasmania defines costs of disability as follows:\(^\text{14}\)

\[ The costs of disability are defined as the regular costs incurred because of the disability which are not faced by non-disabled people. They are not luxuries or lifestyle purchases but basic needs like transport, medication and medical treatment, staying clean and healthy, special aids and equipment and home modifications. \]

27. Anglicare Tasmania concluded that costs associated with disability can be high and result in significant financial stress:\(^\text{15}\)

\[ Overall having a disability is very expensive and associated with a substantial increase in the incidence of financial hardship and a higher \]


probability of experiencing severe financial stress including having to sell things or seek help from others (Saunders, 2005). In addition income poverty is recognised as having multiple dimensions making people vulnerable to broader disadvantage and social exclusion. Financial insecurity together with attitudinal barriers can combine to reduce the ability of people with disabilities to participate in employment, education, health services and social and recreational activities and heighten a sense of isolation and exclusion.

E. THE NEED FOR SAFETY NETS AND INCREASED MINIMUM WAGES FOR PEOPLE WITH DISABILITY

28. Unfortunately very little data is available with respect to wages for people with disability in employment.

29. The most recent data published by the Australian Bureau of Statistics on the composition and distribution of earnings and hours paid for, as well as information on how employees’ pay is set (by award only, collective agreement or individual arrangement) lacks any specific information about employees with disability.16

30. The AFPC recently acknowledged that the real wage has declined (as reported by the AFPC in the recent Economic and Social Indicators – Monitoring Report, July to December 2007).

31. HREOC notes from the AFPC’s recent Economic and Social Indicators – Monitoring Report, July to December 2007 that the AFPC looks at the real disposable incomes of a number of household types, each containing one worker only, who is on the Federal Minimum Wage.17

32. HREOC urges the AFPC to include people with various disabilities in research examining disposable incomes and safety nets. In doing this the AFPC should also examine the cost of disability for each individual surveyed (with various disabilities). Such an approach would provide the AFPC with an opportunity to examine the income safety net for people with disability on the Federal Minimum Wage as a result of the interaction of wages, taxes, transfers and costs of disability and determine the value of the person’s disposable income. This is defined by the AFPC as follows:18

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The income safety net afforded to low-paid workers is the net result of the interaction of wages, taxes and transfers. At a given level of wages, changes in tax/transfer parameters will affect the value of a person’s disposable income and, hence, of the safety net.

33. With the knowledge that there has been a decline in real wages, evidence of high costs associated with disability and high costs for people with disability to participate in employment (see Section F below) and the link between disability and poverty, HREOC urges the AFPC to take these findings into consideration and increase the standard FMW to reflect increases in the cost of living in order to provide a safety net for people with disability.

34. **HREOC recommends** that due to the high costs associated with disability and with participation in employment in particular and the establishment of a close link been disability and poverty, the standard FMW should be increased to reflect increases in the cost of living as a safety net for the low paid [Recommendation no. 1].

35. **HREOC recommends**, in the event of an increase to the standard Federal Minimum Wage (standard FMW), the special Federal Minimum Wage (Special FMW) should be adjusted to the same amount. As in the 2007 Minimum Wage Decision, the Special FMW should be set at an amount equal to the standard FMW so that employees with disability are not discriminated against on the basis of their disability. People with disability are entitled to receive a wage commensurate with their experience, skills, training and qualifications like all other workers [Recommendation no. 2].

F. **HIGH COSTS FOR PEOPLE WITH DISABILITY ASSOCIATED WITH PARTICIPATION IN EMPLOYMENT**

36. As outlined in HREOC’s previous submissions to the AFPC, many people with disability face significant costs in negotiating their daily lives which are not faced by people without disability. 19

37. HREOC also stated in those submissions that no research has been conducted to determine the exact costs for people with disability when they participate in employment nor has the government given any guarantees to ensure that people with disability will not be financially worse off if they are forced to enter the workforce. This continues to be the case.

38. Data collected by Anglicare Tasmania provides further evidence that these costs are substantial and operate as a barrier to employment for many people with disability: 20

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The additional costs involved for a person with disabilities to take up employment can be substantial. They include participation costs like maintaining and servicing a wheelchair, time restrictions (it might take two hours to be work ready in the mornings and be dependant on the prompt arrival of a home support worker), the availability of flexible hours (to cope with fluctuating health and medical appointments) and an accessible workplace and toilets. There are also the costs in terms of energy: the ability to work and to prepare a meal and do the housework.

39. Anglicare Tasmania found that many disability-related costs of employment are being borne by people with disability. Specifically, it was found that while some costs might appear small, the cumulative impact could be substantial and act as a barrier to employment.21

40. Costs associated with transport were also identified as major issue. In particular, current government subsidies were found to be inadequate to meet actual expenses.22

41. Participants in the Anglicare Tasmania study indicated that costs associated with disability to participate in employment operated as a significant barrier:23

   Interviewees considered they could not be expected to participate in the labour market without reasonable levels of assistance to offset the costs involved.

42. HREOC also renews its recommendation to the Australian Fair Pay Commission to conduct research on a broader scale into the economic costs of people with disability to enter and remain in employment.

43. HREOC recommends that the AFPC research the economic costs for people with different disabilities to enter and remain in the open workplace. This research should be overseen by a reference group which includes peak disability groups and employers. HREOC would welcome the opportunity to be involved in this process [Recommendation no. 3].

G. INCONSISTENCY OF PAY OUTCOMES ACROSS WAGE ASSESSMENT TOOLS FOR EMPLOYEES WITH DISABILITY IN BUSINESS SERVICES

44. HREOC is concerned that some wage assessment tools available to business services to assess productivity and determine wages may produce different wage outcomes for people performing the same work.

45. HREOC has previously urged the AFPC to investigate the consistency of wage outcomes, and fairness of wages, for persons undertaking similar tasks in

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different business services when assessed with different wage assessment tools.\textsuperscript{24}

46. HREOC notes Standard 9 (Employment Conditions) of the \textit{Disability Service Standards, Quality Assurance Handbook} (Family and Community Services, 2001), which states the following:\textsuperscript{25}

\textbf{Standard 9: Employment conditions}

\textit{Each person with a disability enjoys working conditions comparable to those of the general workforce.}

\textbf{KPI 9.1} \textit{The service provider ensures that people with a disability, placed in open or supported employment, receive wages according to the relevant award, order or industrial agreement (if any) (consistent with legislation). A Wage must not have been reduced, or be reduced, because of award exemptions or incapacity to pay or similar reasons and, if a person is unable to work at full productive capacity due to a disability, the service provider is to ensure that a pro-rata wage based on an award, order or industrial agreement is paid. This pro-rata wage must be determined through a transparent assessment tool or process, such as Supported Wage System (SWS), or tools that comply with the criteria referred to in the Guide to Good Practice Wage Determination including:}

\begin{itemize}
  \item compliance with relevant legislation;
  \item validity;
  \item reliability;
  \item wage outcome; and
  \item practical application of the tool.
\end{itemize}

\textbf{KPI 9.2} \textit{The service provider ensures that, when people with a disability are placed in employment, their conditions of employment are consistent with general workplace norms and relevant Australian Government and State legislation.}

\textbf{KPI 9.3} \textit{The service provider ensures that, when people with a disability are placed and supported in employment, they, and if appropriate, their guardians and advocates, are informed of how wages and conditions are determined and the consequences of this.}


47. The *Guide for Good Practice Wage Determination* specifically includes validity and reliability testing as part of its criteria to enhance the rigour of the assessment and improve wage outcomes.\(^{26}\)

48. HREOC believes that while each individual wage assessment tool may produce valid and reliable results, there should be a transparent process to ensure that different tools that are used by different Business Services to assess the same job also produce consistent results across the tools.

49. HREOC is concerned that not all tools presented for approval have conducted thorough validity and reliability testing. The lack of testing on each individual tool enhances the probability that different tools to assess the same job will produce different wage outcomes.

50. HREOC notes that Business Services often need to devise their own tools as an approved tool may not be available for use by other Business Services. Comparative tests of these tools in particular are warranted as they are devised to potentially test the same or similar tasks.

51. Comparative testing also introduces an additional external checking mechanism to ensure pro-rata wages are fair and determined through a transparent assessment tool or process. For example, a comparative process may help detect anomalies in wage outcomes that may or may not otherwise be apparent without a comparison. For example, where:

   - the wage structure of the tool caps wages (that is, employees are unable to earn the full award wage regardless of level of productivity or competency);
   - the tools are complex;
   - competency or productivity scoring allows for some degree of personal judgement by assessors;
   - thorough checking for compliance with all relevant legislation (including the Commonwealth *Disability Discrimination Act 1992*) and standards has not been conducted; and
   - thorough validity and reliability testing has not been conducted.

52. HREOC also believes that where a wage assessment tool is used, the tool must ensure a “fair wage”.

53. HREOC notes that the Commonwealth Department of Family and Community Services *A Guide to Good Practice Wage Determination (2001)* states the following with respect to ‘What constitutes a fair wage’ in business services:\(^{27}\)

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It is accepted that in open business, wages are paid according to the merit of the worker, with relevant awards acting as a ‘safety net’. Wages are rarely paid in accordance with the capacity of the employer to pay, as an inability to pay represents a non-viable employer. In this circumstance, the employer is required to adjust their business operations by either – reducing costs (not wages); finding better ways to do business (equipment, training etc.); changing the focus of business (exploring alternative markets); increasing revenue (charging more or selling more); or reducing the number of employees. These decisions may not be palatable to many Business Services, particularly where reduced financial viability may place jobs at risk. The challenge, therefore, is to adapt business operations to ensure that fair wages are payable to all employees of the Business Service.

One approach that Business Services may adopt in order to enhance capacity to pay fair wages is to ensure that quotes for work are based on reasonable wage rates, representing the true cost of labour. It is understood that the highly competitive environment in which Business Services operate has led to a culture of ‘undercutting’ and cost reduction to ensure work keeps flowing. Business Services may need to discuss alternative pricing structures with their clients when making the transition to fairer wage payment systems.

54. Concerns about levels of pay for people with disability working in business services were also noted in the examination of poverty and disadvantage conducted by the Senate Community Affairs References Committee in 2004. The Committee concluded:

16.42 The Committee believes that employees in Business Services need to have appropriate pay and working conditions but that a balance needs to be struck between providing these conditions and maintaining the viability of the various enterprises concerned. The Committee believes that the Government should continue in efforts to improve the viability of Business Services so that better wages and working conditions can be provided for people with disabilities working in these enterprises.

55. HREOC also notes the current discrepancy in wage outcomes in Business Services as a result of the availability of the minimum weekly payment available to employees with disability on the Supported Wage System (SWS) which is not available to other employees with disability working in Business Services assessed with other wage assessment tools.

56. HREOC renews its appeal to the AFPC to investigate the consistency of wage outcomes, and fairness of wages, for persons undertaking similar tasks in different business services when assessed with different wage assessment tools.

57. **HREOC recommends** that the AFPC should examine a system to ensure fairness and consistency across wage assessment tools so that people performing the same job in different business services are paid an equivalent wage, and a fair wage, regardless of place of employment [**Recommendation no. 4**].

58. **HREOC recommends** the introduction of a minimum weekly payment across all wage assessment tools in Business Services identical to the minimum weekly payment available to employees on the Supported Wage System (SWS). This will ensure that all employees with disability are guaranteed a minimum weekly payment regardless of place of work or assessment tool used to calculate wages [**Recommendation no. 5**].