WorkSight Pty Ltd is an industrial relations consultancy committed to providing independent and practical advice to its clients. WorkSight has a wide range of clients and is a specialist adviser in the education, training & employment services sectors. WorkSight believes that its work in the Group Training Sector in particular makes it well placed to make submissions regarding apprentice and trainee wages.

**Summary of Submission**

The key issues raised in our submission are:

- the impact of the AIRC Full Bench decision ([2007] AIRCFB 439) in relation to the allowances and loadings that form part of the basic periodic rate of pay under the National Building and Construction Industry Award (NB&CIA), and

- the publication of legally binding basic periodic rates of pay.

In order for employers to comply with their legal obligations in relation to rates of pay, those rates must be identifiable. In the case of apprentices and trainees, the interpretation of the AIRC supplementary decision referred to above as it relates to apprentice wages in particular has caused confusion amongst employers. Inconsistent application of this interpretation in published pay scale summaries has resulted in the legal obligations of employers being almost impossible to establish. In some cases the interpretation of the AIRC decision appears to have created a new obligation on employers in relation to their apprentice wages that would operate from 01 December 2006. While it is reported that the Government has directed the FPC to cease its work in publishing pay scales, the lack of binding published pay scales has further inhibited the capacity of employers of apprentices to establish their correct legal obligations or for apprentices to be aware of their entitlements.

**BUILDING AND CONSTRUCTION INDUSTRY PAY SCALES**

The decision of the AIRC ([2007] AIRCFB 439) was made specifically in relation to the National Building and Construction Industry Award (NB&CIA). While the decision determined that follow the job loading formed part of the basic periodic rate of pay for tradesmen and labourers, the decision did not make particular reference to the application of the follow the job loading to apprentice rates of pay. WorkSight understands that the decision has been interpreted to mean that the apprentice rate is derived from the “daily hire” basic periodic rate of pay established for a tradesman.

Prior to the changes to the Workplace Relations Act effective from March 2006, the follow the job loading in the NB&CIA Award only applied to tradespersons and
labourers (clause 18.3.1 Tradesperson and labourer employees - follow the job loading).

Apprentice rates, at least in Victoria, as specified under clause 20 of the NB&CIA are to be derived from the aggregate of the appropriate tradespersons minimum weekly rate prescribed in 18.1 and the special allowance prescribed in 18.2 of this award. There is no provision for the follow the job loading specified in clause 18.3 to be included in the aggregate rate from which the apprentice rate of pay is derived.

Apprentice rates under this award have not included follow the job loading as apprentices are not subject to daily hire (to which the hourly daily hire rate applies) as this is inconsistent with the longer term commitment to a training contract required by an employer engaging an apprentice. This longer term commitment is a requirement of the state training authorities in approving the training contract.

The interpretation by DEWR (as it was then) of the AIRC “follow the job loading” decision to apprentice rates of pay derived from building and construction and plumbing awards both federally and some state awards has caused a number of problems in determining obligations both in relation to the basic periodic rate of pay and allowances payable under awards. The distinction for apprentice rates as to what falls under the basic periodic rate of pay and what comprises an award allowance is now not clear. The interpretation of this decision has then been flowed on to some other construction pay scale summaries derived from federal awards and NAPSA’s but not all.

Apart from questions as to whether the AIRC decision should apply to apprentice rates under the NB&CIA Award, two problems have arisen in relation to this interpretation. Firstly, the rates established in the pay scale summaries derived from federal awards deem follow the job loading to be part of the basic periodic rate of pay and this has meant that any allowances included in the follow the job calculation have only been included as they were at 26 March 2006. Any increase to the rate of pay in a particular allowance under a federal award since that time has then become payable separately as an award allowance (an example of this is industry allowance under the National Building and Construction Industry Award). This is not identified in any currently published pay scale summaries.

Secondly, in the case of apprentices, where they are entitled to the full allowance under an award, the derivation of the apprentice rate from the follow the job rate has meant that in some cases only the relevant percentage has been applied as part of the pay scale. The “residual” component of the allowance (i.e. the full allowance less the follow the job adjusted portion contained in the basic periodic rate of pay) is then payable as an allowance. The pay scale derived from the Order – Apprentices and Trainees Wages and Conditions in relation to Building and Construction in Queensland makes reference to the “residual” being payable. That pay scale summary as at 10 December 2007 states:
In addition to this proportion, an apprentice may also be entitled to payment of the residual amount of the industry allowance as specified in clause 5.6.24 of the 26 March 2006 version of the award.

The pay scale does not identify the amounts which are part of the basic periodic rate of pay so that the residual can be calculated.

Some other examples of issues which have arisen are as follows:

The derivation of apprentice rates from daily hire trade rates under the Building and Construction Industry Award in Queensland has resulted in a percentage of the full tool allowance being payable to apprentices when this allowance has never been payable to apprentices under the Order – Apprentices and Trainees Wages and Conditions from which apprentice and trainee rates and conditions are largely derived in Queensland. The interpretation that tool allowance should be included creates an obligation from 01 December 2006.

The trade rate from which apprentice rates are derived in relation to Plumbers and Gasfitters in NSW has included the trade “special allowance” of $7.70 which was never payable to apprentices and it is not clear whether this should be absorbed against the apprentice special allowance ($17.10 in first year). The same difficulty arises in relation to components of industry and tool allowance under that pay scale.

In contrast construction awards in Western Australia and South Australia have not had the follow the job loading applied to published apprentice pay scale rates at this stage.

Given that the Workplace Ombudsman has identified young workers and apprentices and trainees as vulnerable workers on whose behalf compliance with pay and conditions obligations will be pursued, it is important for employers to have clear advice about their obligations. WorkSight’s clients want to pay their legal entitlements but our efforts on their behalf to clarify what those entitlements are have not to this point been successful.

Conclusion

The uncertainty that has arisen from the AIRC “follow the job loading” decision should be clarified by the FPC in its decision in terms of its application to all basic period rates of pay and NAPSA’s in the construction industry. The FPC should make a clear statement about the application of that decision in its 2008 decision. Employers and employees are entitled to know their legal obligations through the publication of legally binding pay scales that identify the components that are payable so that award components can be properly identified. The FPC should consult with the Federal Government about recommencing the process of establishing and publishing basic period rates of pay.