SUBMISSION

TO THE

AUSTRALIAN FAIR PAY COMMISSION

(submissions@fairpay.gov.au)

March 2009

313 Sussex Street, Sydney NSW 2000
Telephone: (02) 9264 2000 Facsimile: (02) 9261 1968
Email: empfirst@employersfirst.org.au
Australian Fair Pay Commission

Submission cover sheet 1

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
* Title: Mr
* Name: Garry Brack
* Address: 313 Sussex Street Sydney NSW

Contact phone number (business hours): (02) 9264 2000

Email address: gjb@ef.org.au

Further details required if responding on behalf of an organisation
* 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, formed in 1904, 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.

Australian Federation of Employers and Industries 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 the New South Wales.

Australian Federation of Employers and Industries 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.
INTRODUCTION

1. Even if the more optimistic of the economic and business condition forecasts for the next twelve months are accepted as the more probable outcome, the picture facing Australian is grim. The Treasury (Treasury, *Economic RoundUp*, Issue I, 7 March 2009) and Reserve Bank statements (Reserve Bank of Australia, *Financial Systems Developments*, Glen Stevens Governor, 10 February 2009) point to little or even negative GDP growth for 2009, unemployment rising to 7 per cent, a fall in business investment, a difficult private and especially commercial property market, and increased debt, thus indicating Australia is in the most severe economic downturn for many decades.

2. If the more pessimistic forecasts are given more credibility then, in 2009, there will be a contraction in the GDP and unemployment could reach 10 per cent. Even the Treasury and Reserve Bank, before the unexpectedly rapid job losses revealed in the February 2009, estimated employment figures could well reach 7 per cent. Many thousands of businesses will be at or near bankruptcy.

3. Even more uncertain than the extent of the current ‘recession’ or severe downturn, depending on the semantics of definition, is how long it will last. Again estimates range from a ‘shallow’ downturn of a year or two through to a prolonged recession.
4. Unfortunately those responsible for making key economic decisions in the first half of 2009 do not have the luxury of knowing how the Government’s and Reserve Bank’s responses to the economic crisis will actually affect the situation. Indeed as the crisis emanated from the global economy, developments in the US, China, Europe and Japan could well outweigh the local response.

5. Clearly 2009 is a time for caution when economic institutions – of which the Australian Fair Pay Commission (the AFPC) is a very important one – make decisions which will affect the expectations and actions of individuals and business. This is even more relevant if those actions that impact business costs, such as a rise in the minimum wage, run counter to the stimulus efforts of government and the Reserve Bank by potentially creating a greater loss of employment amongst the lower paid than providing income stimulus to the lower paid.

6. In March 2009 the information emerging on global and Australian economic conditions is obviously disturbing.
7. The AFC should carefully consider the ramifications of continuing to set a minimum wage at a high level, equated by some as social equity, because job creation and retention rates will be determined by the market.

8. A high risk of unemployment is always faced by the low skilled, and this risk is now extended more widely through the labour market. The greater the emphasis that is placed on the role of the minimum wage as an income safety net, the less likely it is that the AFPC will meet the objective of improving the capacity of the unemployed and low paid to get and keep jobs. The focus of the AFPC in dealing with “the capacity of the unemployed and low paid to obtain and remain in employment”¹ should be on minimising barriers to employment for those in low paying jobs. Equally, it should be very concerned to maintain employment and competitiveness across the economy².

9. For these reasons the AFPC should not increase the minimum wage in its 2009 review scheduled to be payable in October 2009 and any review should be deferred until there is greater certainty about economic conditions. In our view, this is unlikely until early 2010.

---

¹ S.23(a) of the Workplace Relations Act 1996.

² S.23(b) of the Workplace Relations Act 1996.
World economic conditions

10. The world economic situation is gloomy. Unemployment in most economies is continuing to rise as GDP slumps and financial markets are at the best volatile and at worst ‘frozen’. The following diagrams illustrate the serious nature of the global economic conditions.

11. The core of the world global economic crisis is the loss of trust and the willingness of banks and other major financial organisations to give credit to one another. A key measure of global financial market trust is the willingness to accept default swaps and this has declined dramatically as the Diagram 1 shows.

Diagram 1: Global Credit markets

Figure 1.4. Bank credit default swaps have fallen from recent peak

Note: Averages of 5-year credit default swap rates on senior bonds across the largest banks. Source: Datastream.

12. Credit is central to the restoration of trust and confidence and despite the US Reserve Bank, the Bank of England and other central banks
creating money and government guaranteeing toxic debt it will be some time before lenders are prepared to take even the most minimum risks.

13. Global share markets reflect this difficult financial situation although from time to time will have technical and short lived recoveries. However, share markets normally precede a recovery in the real market by around six months.

**Diagram 2: Global share markets**

![Global Equity Markets](image)

14. The diagram on key GDP growth (or rather decline) illustrates the global nature of the world recession.

**Diagram 3: GDP Australia’s Trading partners – IMF Forecast**

![Graph 2: 2009 IMF GDP Forecasts](image)


**Diagram 4: Global Unemployment**

![Figure 1: Global unemployment trends, 1998-2008*](image)


*2008 are preliminary estimates
Source: ILO, Trends Econometric Models, December 2008, see also source of Table A1
15. The deteriorating outlook for the World economy is even more starkly identified in this chart from the IMF global outlook report.

**Diagram 5: Global Industrial Production and merchandise Trade**

16. The situation in China is of particular concern to Australia and as Diagram 6 evidences the dramatic fall in the demand for manufactured goods worldwide is taking its toll on Chinese GDP growth and employment. It is estimated that there are up to 30 or 40 million unemployed and many millions more underemployed in the last few months. Offsetting this may be the impact of the huge Chinese government stimulus to the economy and its central control over business and output.

17. In the end the US economic situation will be the engine that drives the global economy upward or reinforce its current difficult situation. Here the signals are mixed but commentators indicate progress will be slow.

Chart 7: The United States GDP

Australian economic conditions

18. The negative impact of the global economic crisis in Australia has been less severe than in many countries but still greater than at any time for over three decades. GDP fell from an annual growth rate in excess of 3 per cent for most of the last 17 years to 0.2 per cent in the December quarter 2008 and 140,000 fewer jobs were lost or not created in the last twelve months.

19. The Westpac Australian Leading Indicator shows just how quickly the economy has slid into economic crisis.

Diagram 8: The Australian Economic – Index of Key Economic Data

The Financial Markets - Credit And Cash Flow

20. The core of the Australian economic problems has been the lack of credit and slowing down and small fall in house prices and of course a significant decline in the share price index.

Diagram 9: Australian Financial markets - Money and Credit


Consumer demand

21. The situation with regard to consumer demand is mixed. Thus retail sales overall have not declined as much as expected. Of particular concern is the 25 per cent decline in net household wealth in the year to September 2008 as a result of lower house and share prices in particular.
Diagram 10: Australian Retail sales

Source: ABS, Retail Trade, Percentage Change from the Previous Quarter, ABS 8502 February 2009.

Australian GDP

22. Diagram 11 illustrates how volatile Australian income and output are and how in 2008 the signs of a significant reduction in National Income and Output were evident. It is suggested the downturn would have been more rapid but for the delayed impact of the global economy on mining income and the better than expected Farm GDP.

Diagram 11: Australian National Income and Output
Diagram 12: Labour Costs

Diagram 13: Inflation

Business Investment and Profits

23. Investment in buildings and equipment is going to fall significantly in 2009 even though the December quarter capital expenditure figures for the capital expenditure were more resilient – growing at 6 per cent with 11 per cent increase in building and construction. However, business investment is a lagged indicator as plans for construction and buying capital equipment are in the pipeline for some time. Business plans are far less optimistic and all the signs are for a fall in the second and subsequent quarters of 2009 as the combined effect of tighter credit, low consumer and business demand and the high cost of employing labour reduce the demand for workers in the Australian economy. A growth rate of about 2 per cent a year is required in the economy just to absorb the new workers coming onto the labour market.

24. Diagram 14 identifies the beginning of a downturn in business profits which if this continues will mean that job shedding will certainly increase. The other indicators in this submission are clearly pointing in the direction of a continuing economic decline.

Diagram 14: Business Profits

25. In this downturn the share of profits to wages was still at 26 per cent of GDP in the last quarter of 2008. It was 21 per cent at the start of the 1991 recession, for example. This may in part explain the long time it took for employment to begin to fall as employers were able to hold onto labour as they were better placed than in the past. However, as profits are eroded this situation can quickly change.

26. Upturns and downturns in the level of employment in Australia normally occur slowly and change six months or more after other lead indicators change. This seems to be the case in 2009. While the lag indicators of employment are concerning, lead indicators such as the number of employment advertisements evidence that the job markets are likely to decline for some time. Thus in February 2009 the number of vacancies advertised online and in newspapers fell. The ANZ's monthly record of online job advertisements showed that the February newspaper ads were 52 per cent below that recorded in the same month in 2007; and internet advertisements had dropped by 28 per cent.

**Diagram 15: Employment and unemployment**

![Diagram](image)

27. The Westpac labour market demand indicator chart illustrates how rapidly the demand for labour was falling by March 2009.

**Diagram 16: Labour Demand Indicator**

![Diagram 16: Labour Demand Indicator](image)


28. The difficult economic conditions are helping to reduce the rate of inflation and this creates a further need to ensure wage rises do not reverse this trend and create another level of problems for business.

**Diagram 17: The Australian Consumer Price Index**

![Diagram 17: The Australian Consumer Price Index](image)

Key factors that will affect the economy in 2009-2010

29. It is argued in this submission that the only thing that is certain is that the Australian economic conditions deteriorated in the latter half of 2008, continued to do so in the first few months of 2009 and will continue to do so most probably until 2010.

30. While we can identify critical factors that will affect the economy in 2009 and 2010 there is considerable uncertainty about how they will actually play out. The key factors that will affect the economy and business over the next twelve months include the following.

- Developments in the US, China, Europe and the global economy generally. Australia trades about 20 per cent of its GDP and is significantly affected by demand for resources in China and Asia and for manufactured goods and services in the US.

- If the stimulus measures are effective, the outcome for the Australian economy will be positive of course. However, it will be many months before there can be any level of certainty about this. At the time of writing this submission the underlying problems of world credit markets had not been resolved, the extent of toxic financial debt not fully exposed and there was considerable uncertainty about how the efforts to quarantine the losses in the subprime and derivative markets would play out.

- The extent to which the US does or does not continue to slow down and move into recession.
The extent to which the problems in the US and the world’s financial markets flow through to Asia. There could be a point at which there will be one financial shock too many. The price of oil is obviously of concern.

The number of times the Reserve Bank lowers interest rates – and how wage and other markets respond. There are early signs that lower interest rates are affecting the real economy but it is important to note the lower interest rates available to mortgage holders have not flowed to the business overdraft and loan markets which in mid-March 2009 were close to being ‘frozen’. The credit shortages could mean that despite lower interest rates businesses do not get sufficient working capital and after June 2009 find rolling over debt difficult. The willingness to take risks in lending is very low and until this changes the willingness of business to employ labour will be restricted.

The nature and effectiveness of the Federal and even State Government responses to these mounting problems. While the unprecedented economic stimulus packages are clearly having some effect on consumer demand there is still doubt about whether this will translate into a more permanent lift in consumer spending or whether the Government bonuses and lower interest rates results in a significant multiplier effect.
The Future

31. Economists always provide a range of interpretations of the outlook for GDP, business investment, employment, inflation and other key economic indicators. However, rarely have they been so united in the view that GDP and employment growth will be slow and even negative. The debate is about the depth and length of the economic problem.

Moderately pessimistic

32. At one end of the economic forecasting spectrum there are those – the Reserve Bank and Treasury amongst them – who take a relatively rather than a very pessimistic view of the current situation. This view is based on the belief that the economy has reached a level where it can cope with the global economic downturn because the financial system and other key economic institutions are fundamentally sound.

Significantly Pessimistic

33. The alternative view is that the global financial and economic problems, the inability of China to switch from a reliance on international demand for its manufactured goods to internal demand, the poor economic situation in much of Europe and the UK and a general slump in world trade will overwhelm the economic policy response of the Australian government and economic institutions. As global growth grinds to a halt it is likely that Australian exports may well continue to 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 continue to
decline and be volatile, and consumer and business confidence take some time to recover. This view sees consumer confidence, unemployment and business conditions generally deteriorating further toward 10 per cent unemployment and a prolonged downturn in the economy.

**Consumer Confidence**

34. In the next few months the expectations of consumers will be critical and this chart of the Westpac Consumer Sentiment Index indicate how sharply expectations have fallen.

**Diagram 18: Consumer Sentiment**

![Consumer Sentiment Chart]


35. The deterioration in consumer expectations has been matched by the decline in business expectations.
The Implications for the Minimum Wage

36. It is submitted that the unprecedented and uncertain employment situation in Australia over the period 2009-2010 makes it very difficult to extrapolate from past economic trends. However, tight credit, lower consumer demand, slow business investment and intense competition will make business look very closely to any signals from economic and social institutions such as the AFPC and react to any increase in labour costs.

37. The AFPC Economic and Social Indicators Report (the Report) acknowledges the inevitability of rising unemployment:

"It is clear from the various business surveys that the Australian labour market will weaken significantly during the course of 2009. A reduction in working hours can be expected to bear the brunt of the initial adjustment. However, more businesses expect a decline in employment and it now seems inevitable that the unemployment rate will rise. The key unknown is how sharp and how prolonged the weakening of labour market will be."³

Whilst we face unprecedented and uncertain conditions at present, an indication of the "key unkown" is provided by the 1990-91 recession where the unemployment rate peaked at 11.2 percent in February

³ Australian Fair Pay Commission Economic And Social Indicators – Monitoring Report, July To December 2008 p22
1993 (note the long time-lag between the depth of GDP falls and the accumulated employment impact).”

38. As diagram 19 shows, it took until February 2008, **15 years later**, for the unemployment rate to bottom out at 3.9 percent (effectively structural full employment in today’s economy) after decade of very strong economic growth.

**Chart 8**

![Unemployment rate chart]

Source: ABS and AFR

39. Restoring employment after a recession, of any magnitude, is a very lengthy process. Many of the jobs lost never reappear. The rate of reappearance of jobs is entirely dependent on the market conditions facing employers and the price at which they are willing to employ.
40. The AFPC 2006, 2007 and 2008 decisions introduced into the economy substantial minimum wage rises throughout all federal pay scales, which were subsequently matched or exceeded by State Wage Case increases, and provided the floor for any bargained outcomes. Consequently these decisions had both an immediate impact on the employers directly affected and a lagged effect on employers generally as the increases filtered through the economy. The Australian Bureau of Statistics makes note of the impact of the AFPC decisions on wage rates generally.  

41. Given the very sharp recent rise in unemployment it is now clear than any increase in labour cost is likely to lead to further job losses.

42. While high skilled workers are now losing jobs in response to changed market conditions and the drop in demand for their skills, the unskilled are always most susceptible to increases in minimum rates. As we have previously submitted to the AFPC, the minimum wage has been set too high to induce employers to employ larger numbers of unemployed and under-employed people.  

---

4 ABS Labour Price Index 6345 .0. Dec 2008 p 5

5 AFEI (previously Employers First) Submissions to the AFPC 2006, 2007, 2008
43. The Report does not provide reassurance that the labour market performance of the low paid is not adversely unaffected by increasing minimum wage costs:

    Employment in low skilled occupations has grown at a more variable but slower rate on average than in the higher-skilled occupations, where employment appears to follow the business cycle.\(^6\)

44. We do not reiterate here in detail our three previous submissions on the impact of a minimum wage which is set too high and impedes job creation and retention, however we consider that these submissions remain valid and relevant, particularly given the decline in economic conditions in 2008-2009. We also note that the caution in the AFPC commissioned research concerning the application of research findings on the likely impact of the minimum wage in less prosperous circumstances.

**Employers subject to additional labour cost increases - Forward with Fairness**

45. Labour cost increases which impact on an employer’s decision to employ arise from a diversity of sources and are not confined to the impact of minimum wage increases. The AFPC should be mindful that direct and indirect labour costs will rise as a consequence of the new industrial regime arising from Forward with Fairness. That these changes are being introduced in the current economic circumstances is a significant consideration for employers. The cost impact is of

\(^6\) op cit p 25
particular concern over the coming year, and throughout whatever transition period which may be put in place.

46. Of most immediate relevance to the AFPC’s deliberations on minimum pay rates are the new form of regulation for multi employer bargaining in lower paying industries and the introduction of modern awards.

Multi employer bargaining in lower paid industries

47. The Fair Work Bill provides a multi layered ‘safety net’ including the National Employment Standards and modern awards. It also includes a new bargaining scheme for ‘low paid’ employees. Low paid employees are deliberately not defined although the government has referred to employees in industries such as child care, community work, security, retail and hospitality. Fair Work Australia is given complete discretion in deciding who is to be assisted, how they are to be assisted and what the final outcome is to be.

48. According to the Bill, the low paid bargaining scheme is intended to assist those low paid employees and employers who have not historically had the benefits of collective bargaining. Fair Work Australia is to assist them identify “productivity improvements” and facilitate bargaining.
49. There are clear, and well established reasons why some industries have lower rates of pay. They cannot afford to pay higher rates, however socially and politically desirable this may be, as the value of the job cannot be sustained at a higher price. It is not economically possible, even with productivity improvements. If bargaining had the potential to produce better wage/ productivity outcomes, in their own self interest, these employers would have already embraced collective bargaining.

50. Any productivity offsets are likely to be ephemeral or non existent, just as they have been when in the past where wage increases have been presented as productivity – based to justify wage increases which were in reality a payment for peace and the ability to operate, not actual productivity gains.

51. The comprehensive safety net structure already in place will now be combined with additional gains to be obtained through bargaining, and importantly, arbitration. It should also be a major consideration that those employers likely to be affected will be starting from a considerably higher safety net than previously. The new NES, successive minimum wage decisions, and the award modernisation process have all combined to increase labour costs, and within an economic environment which is increasingly precarious.
**Award modernisation**

52. Modern awards are the outcome of the Australian Industrial Relations Commission (AIRC) implementation of government policy, undertaken under ministerial direction. In setting their terms, the AIRC referred to the Minister’s award modernisation request, the Government’s submissions on specific matters during the consultation process and the legislative intention of the Fair Work Bill.

53. Despite the Minister’s request that modern awards are “*not intended to increase costs for employers*”, and the stated objective that modern awards would be easy to apply and reduce the regulatory burden on business, it was inevitable that this would not be the outcome.

54. Different state and federal award provisions have been aggregated into bulk awards. With the agglomeration and extended application of awards, employers now face new classification structures, new award provisions and transition arrangements which become operative from 1 January 2010. In short, a new set of compliance requirements which cannot be dismissed as “some wins, some losses” to be ironed out over time. In many cases, they will substantially increase costs for employers.
55. Modern awards will require employers to review their classification structures, hours of work and operational procedures to comply with changes, particularly in pay rates, hours of work and penalty provisions and ensure that they comply with award flexibility requirements.

56. Transitional arrangements are apparently intended to lessen the immediate cost impact for employers, the detail of these arrangements is as yet unclear. Importantly, transitioning does not remove the increase in costs, which ultimately have to be met by the employer. They are cost increases which would not otherwise have been incurred.

57. Appendix A contains a series of worked examples of some the ways in which costs will be incurred under modern awards. The examples are taken from modern awards which have been made in Stage 1 of the AIRC proceedings and focus on the changes to hours and penalty rates. It should be noted that other award costs will be incurred by provisions such as the extension of dispute resolution leave, payment of superannuation entitlements on workers compensation payments and new classification structures. In addition, the NES have new entitlements which will further increase labour costs.

58. These costs cannot be regarded as isolated from minimum wage increases. They form part of the wages bill, and the extent to which this is increased will have a direct effect on employment.
Cost increases in the modern retail award

Scenario 1

Part-time Grade 1 shop assistant.

Employee works 20hrs per week.

Employee Works: 4 hours per day, on 5 days per week. Hours are worked from 12pm to 4pm, Monday to Friday.

Entitlements under the NSW NAPSA:

Payment for ordinary hours: $316.80 ($15.84 * 20hrs)

Entitlements under the Modern Award:

Payment for ordinary hours: $315.80 ($15.79 * 20hrs)

Difference of $1.00

= 0.3% decrease in costs (nearly identical costs).

Employee’s take home pay will be maintained at NAPSA entitlement.
**Scenario 2**

Same employee as above.

In one week, the employee is asked to work additional hours.

The employee works an additional 2 hours per day, finishing work at 6.30pm (including 30 min break). Total hours in that week are 30hrs.

Entitlements under the NSW NAPSA:

Normal 20hrs payment: $316.80

Payment for additional hours: $158.40 ($15.84 * 10hrs)

Total: $475.20

Entitlements under the Modern Award:

Normal 20hrs payment: $315.80

Payment for additional hours: $236.85 ($15.79 * 1.5 * 2hrs * 5days)

Total: $552.65

Difference of $77.45

= 16.3% increase in wage costs.

The NSW NAPSA allows for part-time employees to work up to 30hrs per week at the ordinary rate of pay, without payment of overtime. The Modern Award requires that all additional hours in excess of the agreed part-time hours be paid at overtime rates.
**Scenario 3**

**Casual shop assistant, paid as a Grade 1.**

Casual shop assistant works on a Saturday.

Casual works 8.5hrs, from 9am to 6pm on Saturday (including 30 min break).

Entitlements under the NSW NAPSA:

Saturday Pay: $164.27 ($15.84 * 1.15(casual loading) * 8hrs) + ($5.90 (Sat loading)) + 1/12th)

Entitlements under the Modern Award:

Saturday Pay: $173.71 ($15.79 * 1.25(casual loading) * 1.1(Saturday loading) * 8hrs)

Difference of $9.44

= 5.7% increase in wages costs.

For all work on a Saturday by casual employees, the NSW NAPSA applies a flat loading of $5.90. Under the Modern Award, casual employees receive a loading of 10% in addition to the 25% casual loading for work on Saturdays.
Scenario 4

Permanent shop assistant, paid as a Grade 1.

Shop assistant works on a Sunday.

Employee works 8.5hrs, from 9am to 6pm on Sunday (including 30 min break).

Entitlements under the NSW NAPSA:

Sunday Pay: $190.08 ($15.84 * 1.5 * 8hrs)

Entitlements under the Modern Award:

Sunday Pay: $252.64 ($15.79 * 2 * 8)

Difference of $62.56

= 33% increase in wages costs.

For Sunday work, the NSW NAPSA provides for payment at time and a half. Under the Modern Award, all work on Sunday is paid at double time.
Scenario 5

A permanent shop assistant works night fill shift between 6pm and 12am (midnight), Monday to Thursday.

Each shift is 5.5hrs (including meal break).

Total hours for the week are 22hrs.

Entitlements under the NSW NAPSA:

Night-fill pay: $409.48 ($15.84 * 1.175 (17.5% loading) * 5.5hrs * 4days)

Entitlements under the Modern Award:

Shift work pay: $451.66 ($15.79 * 1.3 (30% loading) * 5.5hrs * 4days)

Difference of $42.18

= 10.3% increase in wages costs.

The NSW NAPSA provides for a loading of 17.5% when an employee performs night shift (night-fill) finishing after 6 pm and up to midnight, and a 30% loading for work finishing after midnight and at or before 8 am. The Modern Award only provides for a single loading of 30% for work starting at or after 6pm and finishing before 5am the following day.
Cost increases the modern hospitality award

Part-time employees

Scenario 1
Part time employee engaged as a wait staff at a restaurant/cafe that opens for breakfast, lunch and dinner.

(a) Works 28 hours a week on the following basis:

Wednesday: 3.30 pm—12 am (8hrs, 30 min unpaid meal break at 7.30pm)
Thursday: 8 am—12 pm (4 hours)
Friday: 1.30 pm—12 pm (10 hours, 30 min unpaid meal break at 6.30 pm)
Saturday: 8 am—2.30 pm (6 hours, 30 min unpaid meal break)

Restaurant NSW NAPSA—Grade 2 - $14.94 per hour

Wed: 8 hours*$14.94 = 119.52
Thursday: 4hrs*$14.94 = 59.76
Friday: 10hrs*$14.94 = 149.40
Saturday: 6hrs*14.94*1.25 (Saturday penalty) = 112.05
Total = 440.73
Hospitality Industry (General) Award 2010—Food & Beverage Attendant Level 2—$15.34

Under the modern award, the employee is entitled to a penalty under clause 32.4 to an additional penalty for work performed between 7pm and midnight at the rate of 10% of the ‘standard hourly rate’ per hour or part thereof. In this example, the worker is entitled to this penalty for part of the shifts performed on Monday and Friday.

Wed: (8 hours*$15.34) + (4.5hours*16.78*0.10) (7pm-12am penalty) = 130.27

Thursday: 4hrs*$15.34 = 61.36

Friday: (10hrs*$15.34) + (5hrs*$16.78*0.10) (7pm-12am penalty) = 161.79

Saturday: 6hrs*15.34*1.25 = 115.05

Total:= $468.47

The rate of pay for an employee engaged as wait staff has increased by 40 cents per hour (3%). In addition, the employee’s weekly wage has increased by $27.74 (6.3%)

(b) If the employee is requested to work overtime of an additional 3 hours on the Thursday shift and is given a half hour meal break before starting these additional hours:
Restaurant NSW NAPSA—Grade 2—$14.94 per hour

Additional hours performed by a part-time employee are treated as casual employment under this NAPSA.

Casuals receive a loading of 20% and an additional payment of $1/12th of ordinary pay to compensate for pro rata annual leave on termination.

14.94*1.2*3 hours*13/12 (Holiday Pay) = 53.784 + 4.482 = 58.266

No meal allowance is payable.

Hospitality Industry (General) Award 2010—Level 2 - $14.75

Under the modern award, additional hours for a part time employee are treated as overtime.

(15.34*1.5*2 hours)+(15.34*2*1 hour) = $76.70

This results in an increase in the wages for overtime of 31.6% from the NSW NAPSA Calculation: (76.70—58.266)/ 58.266= 31.6%

The employee will also receive a meal allowance in accordance with Clause 21 of $10.07 because the employee has worked more than 2 hours of overtime without being notified on the previous day.

Calculation: (86.77—58.266)/ 58.266 = 48.92%.

This results in an increase of 48.92%.
Scenario 2

Part time employee engaged as a wait staff at a restaurant/cafe working the following hours:

Mon: 9 am—12 pm (no meal break)
Tues: 7 pm—12 pm (no meal break)
Fri: 9 am—5 pm (30 minutes unpaid meal break)

Restaurant & c., (State) Award [NSW- NAPSA]—Grade 2—80% of $14.94 per hour = $11.95
Mon: 3 hours*11.95 = 35.85
Tues: 5hrs*11.95 = 59.75
Fri: 7.5hrs*11.95 = 89.63
Total: $185.23

Hospitality Industry (General) Award 2010—Level 2—85% of $15.34 = $13.04

Under the modern award, the employee is entitled to a penalty under clause 32.4 to an additional penalty for work performed between 7pm and midnight at the rate of 10% of the ‘standard hourly rate’ per hour or part thereof. In the below calculation, this penalty applies to the hours worked on the Tuesday.

Mon: 3 hours*13.04 = 39.12
Tues: (5hrs*13.04)+(0.1*16.78*5hrs) (7pm-12am penalty) = 73.59
Fri: 7.5hrs*13.04 = $97.80
Total: $210.51

**Increase of $23.42 (13.65%) in wages for the week for this employee.**

**Casual employees**

Casual 20 year old employee working following hours (no duties that involve direct service to customers):

Mon: 9 am—12 pm (no meal break)

Tues: 7 pm—12 pm (no meal break)

Fri: 9 am—5 pm (30 minutes unpaid meal break)

**Restaurant NSW NAPSA—Grade 1—90% of $14.49 per hour = 13.04 + 20% casual loading = 15.65**

Loaded casual rate: $15.65 (20% casual loading)

Mon: 3 hours*15.65*(13/12) (Holiday pay) = 50.86

Tues: 5hrs*15.65*(13/12) (Holiday pay) = 84.77

Fri: 7.5hrs*15.65*(13/12) (Holiday pay) = 127.16

Total: $262.79

**Hospitality Industry (General) Award 2010—Level 1 —$14.75 = 14.75 +25% casual loading = $18.44**

**Note:** 20 year olds receive the full adult wage under this modern award.

Mon: 3 hours*18.44 = 55.32

Tues: (5hrs*18.44)+(5hrs*16.78*0.1) (7pm-12am penalty) = 100.59
Fri: 7.5hrs*18.44 = 138.30

Total: $294.21

A difference of $31.42 for these shifts alone, representing a 12% increase. The major impact on the pay rates is caused by the fact that a 20 year old employee now receives the full adult wage under the modern award.
Cost increases in the Modern Clerical Award

The following examples have been taken from a comparison with the NSW NAPSA.

Rates of Pay

There are significant differences between rates of pay. Grade 1 under the NAPSA is $582.92 and the modern award has a level 1 range of $580 - $630 at year 3 in that level. This is a cost increase at level 1 of $47.08 per week over the NAPSA, or 8%. The difference in wage rates at levels 2, 3 and 4 is also significant.

Part time provisions—overtime after usual hours

Part time provisions in the modern award require all time in excess of working hours agreed in advance are to be paid as overtime:

At the time of engagement the employer and the part-time employee will agree in writing on a regular pattern of work, specifying at least the numbers of hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day.

All time worked in excess of the hours mutually arranged will be overtime and paid for at the appropriate overtime rate.

Under the current NSW NAPSA, a grade 3 employee could be paid at $16.78/hr for up to 2 hrs beyond their normal finishing time, on up to 4 days in any one month, provided those hours are within the normal span of hours. These additional hours would cost the employer $134.24 per month ($16.78 * 2 * 4).
Under the modern award, all additional hours for a part-time employee beyond their agreed finishing times will need to be paid at overtime rates. Therefore, the cost to employers of having a part-time employee work up to two additional hours on 4 days in one month would be $213.12 ($17.76 \times 1.5 \times 2 \times 4), taking into account the higher grade 3 rate in the modern award.

This is a cost increase of $78.88 per month or 59%.

If the NAPSA grade 3 rates are increased to match the modern award, the increased cost to employers would still be $71.04 per month, or 50%.

**Junior rates higher**

The junior rates in the modern award allow for a junior rate at under 16 years. The NSW NAPSA allowed for a lowest junior rate of only under 17 years. Whilst this may seem advantageous, the proportions to adult wages used in the modern award appear to be more generous than the NSW NAPSA. The NSW NAPSA proportions range from approximately 39% for an employee under 17 years and below grade 3 and proportions of between 81% and 87% for juniors at 17 years, which 3% to 9% higher in the modern award.

Further, the junior rates in this modern award are based on proportions of the adult wage at the grade the employee works at. This will give further cost increases to employers, as the current NSW NAPSA bases all proportions on the grade 1 adult wage.

A grade 1 employee under 17 years of age under the NSW NAPSA must be paid $229.90 per week. Under the modern award, this employee must be paid at $290 per week. This represents an increased cost to employers of $60.10 per week, or 26%.
The differences between junior rates in the NSW NAPSA and modern award remain significant across grades and age groups. A 19 year old, grade 3 junior would be paid $432.44/week under the NSW NAPSA, but must be paid $540/week under the modern award. This is an increase of $107.56/week or 25%.

**Vehicle allowance higher**

The motor vehicle allowance in the modern award is treated differently than the NSW NAPSA. The modern award only provides for a rate per km for either a motorbike or car, whilst the NAPSA provides for a flat weekly rate, or a per km allowances for incidental car use.

Potentially, an employee using their own vehicle for work duties could receive an allowance of up to $296 per week, based on 400km at 0.74/km. Under the NSW NAPSA, an employee required to provide their own vehicle would only be entitled to $83.85 - $103.05 for the same number of kilometres.

**Superannuation payable while on workers compensation**

An employee under NSW NAPSA will be paid superannuation contributions as per the SGAA 1992. The contributions are based on the meaning of OTE, which does not include payments for workers compensation when an employee is fully incapacitated. It would, however, include workers compensation top-up payments when an employee is performing suitable duties. Under the modern award, the employee would be entitled to super contributions on all workers compensation payments for up to 52 weeks. This will create a significant cost increase for employers.
For example, an employee receiving workers compensation payments of $510.08 per week (based on 80% of grade 2 rate) for 26 weeks for total incapacity would not receive any super contributions during this period under the NSW NAPSA. Under the modern award and current SGAA, the employer would need to continue to make contributions of 9% of gross income, which would total an additional $1,194 over this 26 week period—a significant cost increase.

**Span of hours**

The hours clauses in the NSW NAPSA and modern award are largely similar. The modern award reduces the span of ordinary hours to commence at 7am, instead of 6am, reducing ordinary hours by 1hr per day. The ordinary span of hours for Saturdays have also changed, with ordinary hours between 7am & 12.30pm, compared to 6am to 12.00pm, which is a reduction of 30mins.

These changes may lead to some cost increases under the modern award, such as payment at time and one half for work between 6am and 7am.

However, the NSW NAPSA also required that a penalty be paid to employees for ordinary hours between 6pm and 7pm of 17.5%, which is no longer payable under the modern award.

The modern award allows for an average of 38hrs, as in the NSW NAPSA, and this modern award also a maximum of 10hrs per day. The NSW NAPSA only allowed for max hours of more than 8 and up to 10 with agreement of majority of employees concerned. Meal breaks remain largely unchanged.

The modern award also allows for two 10-minute rest breaks each day. These rest breaks are paid and considered time worked. This therefore creates an additional cost for employers of 20 minutes each day of paying staff without any production. An organisation would lose 100 minutes of
productivity each week per employee due to these rest periods, and 80hrs of lost productivity each year, per employee.

**Overtime—Saturday shift increased by 6%**

Under the NAPSA, an employee working ordinary hours on a Saturday would be paid their ordinary rate of pay, plus a flat loading of $14.95 for that shift. Under the modern award, such hours must be paid with a loading of 25%. This will result in a significant cost increase for employers. For example, under the NAPSA, a 5 hr Saturday shift would cost an employer $98.85 (based on rate of $16.78 for 5hrs with loading of $14.95). However, under the modern award, this shift will cost an employer in wages $104.88. This is a cost increase for Saturday morning work of 6%.

**Shift work**

The NSW NAPSA allowed employees to be engaged as a combination of day and shift workers, meaning work can be all day Saturday or Sunday, and ordinary hours between Mon & Fri, without payment of overtime and significantly lower penalty rates. The modern award does not allow for this type of engagement. Under the NSW NAPSA a day worker employee could work ordinary hours all day Sunday (7.6hrs) with loading of 75%. This would cost an employer $223.21 (based on standard rate). Under the modern award, a day worker who also works Sundays would be paid $255.06, an increase of 14%.

**Shift loading and annual leave loading**

The major difference between the modern award and the NSW NAPSA in terms of annual leave loading is the application of the loading of 17.5% or the shift loading that would apply, whichever is greater, under the modern award. For a day worker, loading will be the greater of the 17.5% loading or
the relevant weekend rates, whichever is greater, but not both. For a shift worker, loading will be 17.5% or the shift loadings that would normally have applied—including weekend rates—whichever is greater, but not both. Under the NSW NAPSA, only the 17.5% loading will apply.

The application of the greater loading has significant cost implications for employers. A permanent night shift employee will receive a loading for annual leave of 30%, instead of 17.5%. On a weekly wage of $740.00 (level 5), this could result in a cost increase of $370 over 4 weeks of annual leave, or 71% cost increase for annual leave loading. Further, if an employee would normally also work Saturdays or Sundays in that period, the cost increase would extend to $606 over 4 weeks of annual leave, or 117% increase in costs for annual leave loading.