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All the fun of the Fair (Pay Commission)

Focus: Workplace Relations News
Areas of Law: Employment Benefits | Employment Law | Workplace Relations
Date: 27 October 2006
Author: Workplace Relations Team

For more in any other e issue, pleas of our Natio Relations Te

On 26 October 2006 the Australian Fair Pay Commission (**the AFPC**) handed down its 2006 Minimum Wage Decision (**the Decision**). The AFPC was created by what are commonly known as "the Work Choices amendments" to the *Workplace Relations Act 1996* (Cth) (**the WRA**). Amongst other functions, the AFPC was invested with the wage setting functions which had been previously been exercised by the Australian Industrial Relations Commission (**the AIRC**) in National Wage Cases which were heard each year.

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The Decision takes effect from **1 December 2006**. This alert explains what the Decision means, who is affected by it, and what employers need to do to ensure that they pay their employees the correct wages or salary.

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Who gets a pay increase?

The AFPC has the power to adjust the Federal Minimum Wage (**FMW**) and Australian Pay and Classification Scales (**APCSs**). The Federal Minimum Wage applies to all employees whose employers are within the scope of the WRA. Such an employee must be paid at a rate which is at least equal to the FMW.

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In order to understand what APCSs are and who is covered by them, it is necessary to consider the transitional provisions which operated when the Work Choices amendments came into effect. Any employees who, prior to 27 March 2006, were covered by either State or Federal awards, carried into the post Work Choices world an entitlement to be paid in accordance with the pay and classification scales which had applied to them prior to the introduction of Work Choices.

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It follows that the AFPC's power to vary APCSs affects all employees who, prior to 27 March 2006, were covered by State or Federal awards, unless the employee has subsequently become bound by some other kind of workplace agreement (for example, a collective agreement or an AWA.)

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The AFPC's decision does not have any effect on employers who are not covered by the WRA (such as employers, outside Victoria or the Territories, who are sole traders or partnerships.) Such employers will need to have regard (as has been the case in previous years) to the wage-fixing decisions of the Industrial Relations Commissions in the State or States in which they operate.

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What are the increases?

It is fair to say that the Decision has resulted in larger wage increases than many employers had hoped for. The Federal Minimum Wage was increased from \$12.75 per hour to \$13.47 per hour, which equates to an increase of \$0.72 per hour and \$27.36 per week. That weekly increase (namely, \$27.36 per week) also applies to all employees who are covered by APCSs which provide for a weekly rate of pay of less than \$700 per week. For example, an employee in New South Wales who performs basic clerical work and

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whose pay is based upon an APCS derived from grade 1 of the *Clerical and Administrative Employees (State) Award* is presently entitled to be paid \$543.60 per week. From 1 December 2006 onwards, that employee will be entitled to be paid at the rate of \$570.96 per week.

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For employees who are covered by an APCS which provides for a weekly rate of pay which is greater than \$700 (or to be more precise about it, greater than \$699.96 per week) then the increase is \$0.58 per hour or \$22.04 per week. The reason for the increase being smaller for such employees is that more highly paid employees are regarded as being less reliant upon safety net increases, and are also more likely to be able to bargain with their employers if they wish to obtain wage increases greater than those provided for by the decision.

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So an employee in New South Wales who performs clerical work at grade 5 of the *Clerical and Administrative Employees (State) Award* is presently entitled to be paid \$700.50 per week. From 1 December 2006 onwards, that employee will be entitled to be paid at the rate of \$722.54 per week.

There is no maximum weekly rate above which the increase of \$22.04 per week ceases to flow. Of course, the increase only applies to employees who are paid in accordance with an APCS, and most managerial and executive employees (for example) would not be covered by any applicable APCS. However, if an APCS applies to an employee then, no matter how great is the rate that the APCS provides for, that rate must be increased by \$22.04 per week.

In addition to the increase provided for by the Decision for 2006, the Decision also has the effect of picking up and applying in 2006 the 2005 National Wage Case decision for any employees who have not already received the increase of \$17 per week which was provided for by that case.

We expect that the number of employers who will suffer this "double-whammy" will be fairly small and we can provide particular advice to an employer who is affected by this aspect of the Decision.

However, a different position applies to employees for whom, although an APCS applies, the APCS does not "set" their rate of pay (because they are paid a greater amount). For example, as noted above, grade 5 (which is the highest grade) of the *Clerical and Administrative Employees (State) Award* presently provides for a rate of pay of \$700.50 per week. There are many clerical employees in New South Wales who are paid substantially more than this rate because, in essence, their skills and experience are such that the market is prepared to pay more.

An employer is not obliged to increase the rate of pay of an employee if the total of the applicable APCS plus the applicable increase which results from the Decision is still less than the employee's actual rate of pay. Of course, the employer may decide to grant an increase to such an employee, but any such decision is one which the employer is entitled to make independently of any compulsion to comply with the Decision.

Finally, it is important to note that the Decision also applies to casual employees and that the decision does not vary the default loading of 20% for which the WRA provides.

When does the Decision come into effect?

The Decision comes into effect on 1 December 2006 (essentially, at midnight on 30 November 2006.) This appears to mean that if a pay period straddles that date, the employee must be paid at the increased rate for so much of the pay period as falls on or after 1 December 2006.

What do you need to do to prepare?

The **first step** is to identify all of the employees who will become entitled to an increase in their rate of pay.

The **second step** is to identify the increase which is required (taking into account, for

example, the employment status of the employee (full-time/part-time/casual)).

The **third step** is to make sure that the necessary payroll arrangements are actually put in place.

Finally, consideration should be given to whether you wish to increase the wages of employees who are not, as a result of the Decision, entitled to an increase in wages.

As this is the first wage increase to occur post Work Choices, the process is likely to be complex, notwithstanding that we have endeavoured in this note to explain the position in terms which are as simple as accuracy permits.

If you require specialist advice on any matter arising from the Decision, please contact a member of our National Workplace Relations team listed on the right hand side of the screen.

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News Item

First decision of the Australian Fair Pay Commission announced

The Australian Fair Pay Commission today (26 October 2006) announced the following increases to minimum wage rates as follows

- An increase of \$27.36 per week in the standard Federal Minimum Wage;
- An increase of \$27.36 per week in all Australian Pay and Classification Scales up to and including \$700 per week; and
- An increase of \$22.04 per week in all Pay Scales above \$700 per week.

The increases take effect from 1 December 2006 (commences midnight 30 November 2006)

This increase does not apply to transitional award employers in the federal system (those that are in the federal system but that are not constitutional corporations). Transitional award rates are subject to the decision of the Australian Industrial Relations Commission. Under the Workplace Relations Act 1996, the AIRC cannot make decisions inconsistent with those of the Australian Fair Pay Commission. It is expected that the AIRC will reconvene at the earliest time in relation to consider an increase for transisitional award employers in the federal system.

The wage increase does not apply to those with pre-reform agreements (AWAs or certified agreements) in operation under the federal system and it does not apply to those outside the federal system that incurred State Tribunal increases earlier in the year.

ARA will be updating wage guides for members shortly. In the meantime members should call ARA Employee Relations in Melbourne on (03) 9321 5020 or Sydney, Queensland and South Australia on (02) 92903766 for enquires about this decision.

 Media Release

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<ul style="list-style-type: none"> Home About Us & Contacts Membership Policy, Research & Information Employee Relations & HR Telephone Advice Awards Consultancy Services Seminars Circulars Public Holidays Human Resource Management Publications Latest News & Information Recent Articles Tenancy & Legal Services Consumer Issues & Advice Retail Business Solutions Consulting Training & Recruitment Events Publications & Advertising Insurance & Financial Services Technology & Communications Retail Supplies & Business Tools Supplier Directory 	<div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <h3 style="text-align: center; margin: 0;">News Item</h3> </div> <div style="border: 1px solid black; padding: 10px;"> <h2 style="text-align: center; margin: 0;">First decision of the Australian Fair Pay Commission announced</h2> <p>The Australian Fair Pay Commission today (26 October 2006) announced the following increases to minimum wage rates as follows</p> <ul style="list-style-type: none"> An increase of \$27.36 per week in the standard Federal Minimum Wage; An increase of \$27.36 per week in all Australian Pay and Classification Scales up to and including \$700 per week; and An increase of \$22.04 per week in all Pay Scales above \$700 per week. <p>The increases take effect from 1 December 2006 (commences midnight 30 November 2006)</p> <p>This increase does not apply to transitional award employers in the federal system (those that are in the federal system but that are not constitutional corporations). Transitional award rates are subject to the decision of the Australian Industrial Relations Commission. Under the Workplace Relations Act 1996, the AIRC cannot make decisions inconsistent with those of the Australian Fair Pay Commission. It is expected that the AIRC will reconvene at the earliest time in relation to consider an increase for transitional award employers in the federal system.</p> <p>The wage increase does not apply to those with pre-reform agreements (AWAs or certified agreements) in operation under the federal system and it does not apply to those outside the federal system that incurred State Tribunal increases earlier in the year.</p> <p>ARA will be updating wage guides for members shortly. In the meantime members should call ARA Employee Relations in Melbourne on (03) 9321 5020 or Sydney, Queensland and South Australia on (02) 92903766 for enquires about this decision.</p> <p> Media Release</p> <p style="text-align: center; margin-top: 20px;"><- Back to: Latest News & Information</p> </div>
Australian Retailers Association - 2006	



National Farmers'
FEDERATION

Media Release

FAIR PAY COMMISSION FAILS TO TAKE ACCOUNT OF FARM REALITIES

26 October 2006

MR 89/06

While recognising the decision by the Australian Fair Pay Commission to increase the minimum wage by \$27.36-a-week may be representative of the broad economic conditions across Australia, the National Farmers' Federation (NFF) said today's announcement failed to take account of the realities facing farmers.

"We are disappointed in today's decision," NFF President David Crombie said. "The increase in wages of \$27.36-a-week is too high for farmers to bear. With half of Australia's agricultural regions in the grip of the worst drought on record, clearly farmers are already under pressure to keep the farm afloat and keep paying existing wages.

"Australia's farms directly employ over 330,000 people – that level of on-farm employment is already under immense pressure due to drought. Today's announcement will only exacerbate pressures on farmers to lay off workers, something we don't want to do."

In its submission, NFF asked the Commission to take into account the specific concerns affecting agriculture, including the current severe drought, when considering a national wage rise.

"We know from studies that demand for labour in regional Australia is more elastic in response to wage changes than in the cities," Mr Crombie said. "Many farmers and businesses in rural Australia have had to make some tough decisions on retaining labour through this drought.

"NFF also argued that the any increase be based on the Consumer Price Index (CPI). The Commission has set the rate well above the substantial \$20-a-week rise the CPI would have warranted, which would have included the sharp rise in the September inflation figures released yesterday.

"While today's decision affects incorporated farmers, as well as farmers in Victoria, the ACT and the NT, the decision will now be a catalyst for the Australian Industrial Relations Commission to follow suit when it makes a wage determination later this year.

"The Australian Industrial Relations Commission must have regard to today's decision when deciding wage increases for employees under transitional awards. Amid the impact today's decision will have on farmers, the NFF will argue exceptional circumstances before the Australian Industrial Relations Commission when it meets."

The NFF stressed that it supports the processes undertaken by the Australian Fair Pay Commission, however, considers that it has not fulfilled its charter in considering the extenuating circumstances facing farmers, as employers, to pay the new wage scales.

Media Enquiries: Brett Heffernan, NFF Public Affairs, (02) 6273 3855 or 0408 448 250 email: bheffernan@nff.org.au

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BSCAA Queensland

E-News *Update*

www.bscaa.asn.au

October 2006

“BSCAA – Committed to servicing our members”

Latest News

SAFE WORK AUSTRALIA WEEK

The Minister for Employment and Workplace Relations, Kevin Andrews, promoted Safe Work Australia Week, which has been celebrated nationally this week from 22-28 October.

“Improving workplace health and safety is a priority of the Australian Government. Every Australian worker has the right to a safe workplace,” Mr Andrews said.

Minister Andrews highlighted the importance of national consistency in occupational health and safety (OHS), workers’ compensation and self-insurance arrangements and outlined changes to the Government’s building and construction accreditation scheme.

The Minister said that he recognised that inconsistencies in OHS legislation and workers compensation arrangements across states and territories are a key impediment to multi-state organisations’ ability to manage the health and safety of their workforce.

The Australian Safety and Compensation Council is currently working on identifying priority areas for harmonisation, and ways in which to speed up the adoption of National Standards and Codes of Practice into state and territory legislation.

Workplace Health & Safety

An article in the Courier Mail during October outlined the need for stringent safety processes on work sites.

A company was fined \$60 000 for failing to comply with workplace health and safety procedures over an incident that left a young girl seriously injured. She had accompanied her parents to work. The girl suffered horrific chest injuries after her clothing became entangled in a machine. As well, the company director was sentenced to a two-year good behaviour bond with a \$10 000 surety.

In light of this and in conjunction with Safety Week, we would encourage members to ensure they are compliant with Health and Safety regulations, including inductions and ongoing OHS training within their businesses.

BSCAA Induction Manual

We are currently working on providing a resource to members for induction processes. Once finalised members will be able to access this generic template for use in their businesses. Progress details will be given E-News each month.

Industrial Relations

Australian Fair Pay Commission's Federal Wage Setting Decision

On 26 October 2006 the Australian Fair Pay Commission (AFPC) handed down its initial Wage-Setting decision. The decision becomes effective from 1 December 2006 and has three elements:

- an increase of \$27.36 per week in the Standard Federal Minimum Wages;
- an increase of \$27.36 per week in all Australian Pay and Classification Scales (Pay Scales) up to and including \$700 per week; and
- an increase of \$22.04 per week in all Pay Scales above \$700 per week.

Importantly for BSCAA members who are operating within the new Federal System (Company's) these increases do not apply to:

- employees covered by preserved state agreements (e.g. the BSCAA Certified Agreement 2005); and
- employees covered by AWA's or certified agreements (Federal) approved prior to WorkChoices.

Additionally these increases do not apply to unincorporated organisations still operating within the Queensland jurisdiction (i.e. sole traders and partnerships) using either the BSCAA Certified Agreement 2005 or the Contract Cleaning Industry Award – State 2003.

For BSCAA members who are not respondents to current BSCAA Certified Agreement(s) and are engaging their employees using preserved state awards (NAPSA's) e.g. Contract Cleaning Industry Award – State 2003, these increases will apply from 1 December 2006.

For more information please call the Employer Advice Line on 1300 135 822.

Security providers still in the spot light

Fair Trading Minister Margaret Keech said the Office of Fair Trading is continuing to monitor security providers and will not tolerate any breaches of the Security Providers Act 1993 (Act).

"On 18 October Innspired Pty Ltd was fined \$750 under the Act for not entering details into the register.

"Crowd controllers are required to fill in a register with:

- the crowd controller's name, residential address and licence number;
- the security firm's name and address (if applicable);
- the date and time when the crowd controller starts and finishes each shift; and
- details of each incident at the public place in which a person is injured or a person is removed by the crowd controller.

"If there is an incident on the premises the register needs to be accurate so that police can properly investigate."

For more information call the Office of Fair Trading on 13 13 04 or at www.fairtrading.qld.com.au.

A draft bill highlighting proposed amendments to the Security Providers Act 1993 is now available for industry and community comment by 6 November 2006. The draft bill can be downloaded at www.fairtrading.qld.gov.au.

Work Choices Information

Speakers from the Office of the Employment Advocate (OEA) are currently presenting information session throughout Queensland. The timetable was sent out to members this week, but should you be unable to attend an OEA information session, please contact BSCAA for assistance to provide an information session for our members in your region.

BSCAA Industry Code of Practice

Our updated Code of Practice was introduced to Government Ministers, Stephen Robertson & Robert Swarten this month to ensure they were fully conversant with our document. The new Code of Practice will be introduced to a number of other Ministers in the coming months.

As this Code of Practice document represents a new version for members, we would ask that if you have not already sent through your signed copy that you do so as soon as possible.

WeComply

The WeComply link on the BSCAA website is available through Risk Management and Education and Training. There are many downloads available from this site for your business use. This is a great tool for members and we recommend regular access to keep updated. If you require your password or User Name to access the website, contact bscaaqld@bscaa.asn.au or call 3257 3931.

Water Restrictions

As current water supplies in South East Queensland continue to fall, it is important for business and industry to keep up to date with further water saving measures and usage restrictions. Queensland's Department of State Development and Trade endeavours to keep your business informed of proposed changes, particularly as many areas move towards Level 4 restrictions.

Currently, Level 3 water restrictions apply to most areas. However, the Queensland Water Commission has released proposed Level 4 water restrictions with a target implementation date of the end of October 2006. This may lead to further limitations on how your business uses water. For information on restrictions and how they may affect your business now and in the future visit: Natural Resources and Water www.nrm.qld.gov.au Queensland Water Commission www.qwc.qld.gov.au Water Forever www.waterforever.com.au .

For all your other business information needs visit www.smartsmallbusiness.qld.gov.au or phone the Department's Business Hotline on 1300 363 711.

BSCAA Regional Sub-Committees

Cairns, Townsville & Toowoomba held their first regional meetings on Thursday 26 October to discuss issues for their regions involving Industrial Relations, Occupational Health and Safety needs and develop action plans which can be developed through BSCAA.

Cairns and Townsville will hold second meetings in late November, while Toowoomba will meet again in early 2007. Thanks to all members who supported these meetings and we would encourage you all to participate at your local level.

BSCAA Events and Awards

Annual Dinner – 8 December, Brisbane Hilton

Invitations and Award Nomination forms for our 2006 Annual BSCAA Awards Dinner, Friday, 8 December 2006, have been sent this month. The RSVP for table bookings and payment is Friday 24 November. This is a great opportunity for our members to meet and celebrate their achievements in 2006. Don't forget to nominate your outstanding staff member for the Awards for Outstanding Contribution to the Building Services Industry for 2006. Winners will be announced at the dinner.

Stay in touch and visit www.bscaa.asn.au regularly

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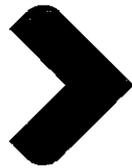
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"BSCAA – Committed to servicing our members"



Employment Update

Workplace Relations & Employment



Australian Fair Pay Commission determination

The Australian Fair Pay Commission (AFPC) recently released its first minimum wage determination. From 1 December the Federal Minimum Wage (FMW) will rise by \$27.36 per week, an increase from \$12.75 to \$13.47 per hour. Employees covered by the Australian Pay and Classification Scales (APCS) who earn up to \$700 per week will also receive the same \$27.36 per week increase and those who earn above \$700 will receive a \$22.04 per week rise. For employees outside the Federal system, the minimum wage is set by State legislation. Apart from the general FMW, the AFPC also sets a minimum rate for juniors, trainees and workers with a disability.

What is the AFPC?

The AFPC was established under the Work Choices legislation. Its primary role is to develop and adjust the FMW and other pay rates relating to different classifications, and casual loadings. Work Choices implemented key minimum employment conditions, such as annual leave, hours of work and personal leave. Leaving aside the operation of the complex transitional provisions, an employment arrangement for a constitutional corporation cannot contain conditions below these minima. The function of the AFPC is therefore to determine the wage component of these minimum conditions. As well as the basic FMW, the AFPC also determines the APCS. This represents minimum pay rates for employees within various award classifications. The pay rate for those in an APCS will be increased as outlined above, however the AFPC has stated that it will seek to streamline the current classification system at some point in the future.

What factors are considered?

In making its determination the AFPC considers:

- >The capacity of the unemployed to obtain and remain in employment.
- >Employment and competitiveness across the economy.
- >Providing a safety net for the low paid.
- >Providing a minimum wage for junior employees, and employees to whom training arrangements apply and employees with a disability to ensure those employees are competitive in the labour market.

It is therefore likely that commentary on this determination will centre on two competing interests; providing a proper safety net for the low paid and ensuring that the minimum wage is not set too high that it prices people out of the labour market.



◀ **Who is affected by this determination?**

The AFPC's determination can only apply to Work Choices employees. It will apply to employees paid in accordance with an award, or the FMW.

How does the determination affect juniors, trainees and employees with a disability?

The increases discussed will flow through to juniors, trainees and employees with a disability. The AFPC also announced that it will conduct a review of junior and trainee wages in early 2007 with a view to future changes, including the potential establishment of new Classification Scales. From 1 December a new FMW will be established, equal to the standard FMW for employees with a disability that does not impair their productive capacity. The supported wage minimum weekly payment will also rise to \$64.00.

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