



# RELATIONS

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NEWSLETTER

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### 2008 DECISION OF AUSTRALIAN FAIR PAY COMMISSION (AFPC)

On Tuesday 8 July 2008, the AFPC handed down its third wage setting decision. The decision increases wages from the first pay period commencing on or after 1 October 2008. Insofar as Employers are concerned, the decision applies only to employees of employers who are Constitutional/Trading Corporations, who are subject to Pre-Reform Federal Awards or former State Awards known as NAPSAS (Notional Agreements Preserving State Awards).

The decision does not apply to employers subject to Federal Awards who are not Trading Corporations and who may be a Partnership; Sole Trader; an unincorporated body; or a Community Organisation which does not engage in trading activities or upon examination, does not satisfy the various tests.

It should also be noted that Primary Producers who are in receipt of Exceptional Circumstances Interest Rate Subsidy are no longer exempt (please call us if you believe you meet this criteria).

#### Quantum of Increases

- Increase of \$21.66 per week (57 cents per hour) in the Federal Minimum Wage. The new Federal Minimum Wage (FMW) will be \$543.78 per week or \$14.31 per hour.
- Increase of \$21.66 per week (57 cents per hour) in all Adult Australian Pay and Classification Scales – These are the preserved pay scales/classification rates of pay applying to pre reform Federal Awards and State Awards propelled into the Federal system as Notional Agreements Preserving State Awards – NAPSAS's (as at 27 March 2006).

**Note:** see exception immediately below re: Transitional Employers.

#### Clients subject to Federal Awards who are not Constitutional/Trading Corporations

The AFPC decision does not apply to you despite the fact that you are a named respondent to a Federal Award. You are termed a Transitional Employer. The Australian Industrial Relations Commission (AIRC) will in the near future determine the wage increases to apply in Awards applicable to your business/organisation.

We would be surprised if the increases are any different to the AFPC but we will have to wait for the AIRC proceedings to take place. They will occur shortly.

#### Absorption

Can an employer absorb the above increases into any over award payments? Generally yes, as the new Federal system sets minimum wages only and as long as the minimum wages are met, no further increases are required.

For example – If you are currently paying an 'over award' payment of \$20.00 per week to an employee – only an additional \$1.66 per week will be payable from October to meet the new minimum (preserved) award rate. Alternately, if you were currently paying the employee \$30.00 per week above the applicable award minimum, no further increase will be required from October because the employee's wage will still be higher by \$8.34 per week.

**How will Employer Services advise of actual "Award" rates?**

We will progressively distribute Wage Ready Reckoners for each and every pre-reform Federal Award and NAPSA that we service for those subscribers who are Trading/Constitutional Corporations and have advised us accordingly.

**National Training Wages**

The AFPC has determined new National Training Wages. We will issue to those subscribers who receive the pre reform Award and the State Counterpart NAPSA the October figures prior to the new rates becoming operative.

**Certified Agreements/Australian Workplace Agreements in place before 27 March 2006.**

If as an employer you had a Certified Agreement or Australian Workplace Agreement in existence prior to 27 March 2006, the AFPC determination does not apply unless the Agreement tied wage increases to Award increases.

If a Trading Corporation, the Agreements are identified in Federal Law as –

Federal	-	Pre-reform Agreement
State	-	Preserved Collective State Agreement

Please check its terms carefully or contact us for assistance.

**Federal Agreements entered into after 27 March 2006**

Under Federal Laws, no Agreement can contain conditions or wage rates less than the Australian Fair Pay and Conditions Standard. Wage rates are those preserved from the applicable Award as at 27 March 2006.

Confusing as it may seem, these types of Agreements may be subject to the application of the October increases if the wage rates in the Agreement will be less than the equivalent wage rate in the Preserved Award after adjustment for the October increases. Please check carefully the terms of your Agreement, but it must be an Agreement lodged in the Federal system after 27 March 2006.

**Junior Rates of Pay; Apprentice Rates of Pay; and Casual Loadings**

For Juniors and Apprentices the percentages continue to be applied, as they were at 27 March 2006. Casual Loadings remain unchanged under Preserved Awards and NAPSA's. Please ring us if unsure.

**2008 State Safety Net Wage Claim for Employers Remaining in the Queensland Industrial Relations System**

The Queensland Council of Unions on 5 June filed in the Queensland Industrial Relations Commission for a General Ruling seeking to increase adult full-time weekly rates by \$29.00 per week and various allowances by 4.9%.

The claim seeks a date of operation of 1 September 2008. For the second time, proceedings in this State case will be after the determination of the Fair Pay Commission. A preliminary hearing was listed for Friday 4 July before a full bench.

A Formal hearing will then follow probably before the end of July.

**Other States:-**

In New South Wales the State Commission awarded increases of 4% per week to State Awards. In Western Australia, the State Commission awarded \$29.00 per week increases to State Awards. In Tasmania, the increase was \$19.00 per week.

We will keep affected Clients advised of all developments in the Queensland State Wage Case.

**Beware: Penalties in Federal System for Award Breaches**

It is timely to warn businesses about the capacity of the Federal Court system to impose significant penalties on businesses that breach Awards or minimum employment standards. More and more we see these significant penalties being imposed and the Federal Workplace Ombudsman is not reluctant to prosecute employers.

The Tasmanian case mentioned below reinforces the warning that businesses must comply with their legal obligations or face penalties.

*A sports retailer that strictly enforced a policy requiring employees at two Tasmanian stores to work unpaid for 15 to 40 minutes before and after their shifts has been ordered to pay almost \$53,000 in penalties.*

*A-Mart All Sports admitted that it had required employees at its Hobart store to work the extra time for nine months until July 2006 and at its Glenorchy store for 15 months until December 2006.*

*In a ruling handed down yesterday, Federal Magistrate Phillip Burchardt said the company had underpaid some 44 employees a total of \$41,235.50 at the two stores during the periods to which the prosecution applied.*

*He said the company had "strictly enforced" the unpaid work requirement, to the extent that one of its managers had dismissed an employee for failing to comply with it.*

*"This was not on any view an attractive work culture", Federal Magistrate Burchardt said.*

*He said the employer's conduct could be "properly described as Dickensian or possibly something even more pejorative".*

*Federal Magistrate Burchardt found the company had breached the obligations under the Workplace Relations Act's s182 to provide the basic periodic rate of pay and s185 to pay casual loading.*

*He said the circumstances justified a "severe" penalty of 90% of the \$33,000 maximum for each breach of the Workplace Relations Act.*

*However, Federal Magistrate Burchardt discounted the penalty by 10% due to the "Relatively belated" cooperation by A-Mart, reducing the penalty to 81%, which he then rounded down to 80%, or \$26,400 for each offence.*

*In setting the penalty, he also took into account that A-Mart had inherited the work practices at the two stores when it took over the former Rowe and Jarman sports stores.*

*Workplace Ombudsman Nick Wilson, who brought the case against A-Mart, was quoted as saying that the magistrate's comments reinforce how seriously both the Workplace Ombudsman and the courts take workplace relations compliance.*

(2008 FCA 592 – 8 July 2008)