

Reality Check for Equal Remuneration Case

The Australian Services Union application to increase minimum modern award wages for social welfare employees on the premise that current wages are inequitable and lower than employees in comparable male dominated work has been dealt a reality check by the Australian Government. The Government has cautioned Fair Work Australia (FWA) that:

"Depending on the decision of FWA, the potential fiscal cost to the Commonwealth of significant wage increases in the SACS sector could be considerable, even taking into account a phased implementation. The Government's fiscal strategy – which is aimed at ensuring fiscal sustainability and returning the budget to surplus – will influence the Government's ability to support the sector in meeting additional wage costs. If any additional Government funding is provided, it would likely come at the expense of other Government funded services."

Readers will recall that in the April 2010 edition of Employee Relations MONTHLY it was reported that the case was initiated by the Australian Services Union under section 302 of the Fair Work Act 2009. This grants Fair Work Australia the power to order higher award rates of pay to ensure in any particular case, there is equal remuneration for work of equal or comparable value.

The current case will succeed if the ASU demonstrates:

- inequality in wage outcomes between the award rates prescribed under the Social Community Home Care and Disability Award 2010 and the award rates for a *comparable or like set of occupations* and
- the difference is due to gender.

In other words, it must demonstrate the rates are unequal because social and community service work has traditionally been seen as '*women's work*' and therefore paid less than award rates for an occupation predominately made up of men.

The Australian Government submission of 18 November 2010 supports the general proposition but its research tends toward the conclusion that the general proposition is not necessarily easily proved. In fact there are complex factors beyond gender that

may impact on wages paid to employees in the social welfare sector in Australia. The Government has urged Fair Work Australia to

"...find the right balance between equal remuneration for SACS employees and the broader implications of any wage increase in reaching its decision. In this regard the Government notes that while signs of economic recovery are clearly evident, some level of volatility is anticipated to remain in the Australian economy in the short-term."

Readers familiar with the often mysterious inner workings of Australian workplace relations will recognise that the Australian Government submission is effectively instructing Fair Work Australia to reject the application or at least ensure the remedy is cost neutral. It would be a very courageous decision if Fair Work Australia were to do otherwise.

[\[More\]](#)

Paid Parental Leave commences 1 January 2011

Australia's first national Paid Parental Leave scheme will start on 1 January 2011. It will provide eligible parents with 18 weeks of pay at the weekly rate of the National Minimum Wage (currently \$569.90 a week before tax).

The scheme will be fully funded by the Australian Government.

Employer responsibilities

It is voluntary for employers to administer payments for the first six months of the scheme. Commencing 1 July 2011, you will be responsible for providing Parental Leave Pay to your eligible employees who have or adopt a child from 1 July 2011, and have worked in your business for 12 months or more and are expecting to receive more than eight weeks Parental Leave Pay.

However, you will have the choice to pay your employee if they have worked for your business for less than 12 months, or are accessing less than eight weeks Parental Leave Pay. If you choose not to provide your employee their Parental Leave Pay in these situations, the Family Assistance Office will pay your employee.

A fact sheet describing the scheme, employee eligibility and the employer's administrative

responsibilities can be downloaded by subscribers to [employee relations online for employment services](#). Other employers can read an overview in the July edition of Employee Relations MONTHLY or go to the Family Assistance Office.

[\[More\]](#)

Fair Work Australia Annual Report

The 2009-10 annual report of Fair Work Australia provides some interesting and useful data on its first year of operation.

Enterprise bargaining

7420 enterprise agreements were filed for approval. 6783 were single enterprise agreements made under the new system.

The median (the most common) number of days for an agreement to be finalised by Fair Work Australia was 35 days. Greenfields agreements took 24 days and multi-enterprise agreements 57 days.

Employers currently planning their own enterprise agreement negotiations should take note of these delays in assessing and approving agreements.

Unfair dismissals

13,054 termination of employment applications were made to Fair Work Australia during 2009-10 and 12,745 applications were finalised.

11,823 (93 per cent) of these applications were finalised at, or prior to, conciliation.

A further 780 (six per cent) were finalised prior to arbitrated orders being issued; and 142 (one per cent) were finalised with an arbitrated order. Only 15 orders were issued under the new system for reinstatement of the employee. 35 orders for payment in lieu of reinstatement were made.

General protections

Fair Work Australia must issue a certificate if it is satisfied that all reasonable attempts to resolve a general protections dispute involving dismissal or alleged unlawful termination application have been, or are likely to be, unsuccessful. Of the 1176 such matters finalised in 2009 -10, the Tribunal issued a certificate for 377 matters (32 per cent). These claims progress to the Federal Court.

[\[More\]](#)

Unfair dismissal conciliation research

Fair Work Australia today released the findings of independent research commissioned to examine the new conciliation process for unfair dismissal applications introduced from 1 July 2009.

The research examined the experiences of applicants, respondents and their representatives with the tribunal's administration of unfair dismissal applications, from the making of an application through to the conclusion of the new conciliation process conducted by Fair Work Australia employed conciliators.

Information about the research process and the full report are available at: [Unfair dismissal conciliation research](#)

Small Business Fair Dismissal Code updated

Following criticism from Fair Work Australia commissioners, the Australian government has amended the Small Business Fair Dismissal Code. In particular, it has amended the preamble and checklist accompanying the code to address the issue of 'genuine redundancy' as a criterion in determining whether a dismissal would be unfair.

[\[More\]](#)

Christmas and New Year Public holiday confusion

Public holidays including the Christmas, Boxing Day and New Year holidays are now regulated by a mix of the National Employment Standards (NES) modern awards, enterprise agreements and State government regulations. Consequently, employers may be confused as to the application and cost associated with employing staff over the 2010 Christmas public holidays.

The NES allows for

- (a). substitution of the public holidays, and
- (b). additional public holidays

If a law of a State or Territory government substitutes another day on which a public holiday to be observed, then that day will be public holiday.

In addition a modern award or enterprise agreement may include terms providing for an employer and employee to agree to observe a public holiday listed above on another day.

This year, Victoria has substituted Christmas Day to Monday the 27th December, retained the Boxing Day holiday on Sunday 26th December and added Tuesday 28th December as another Boxing Day public holiday. There are two New Years Day holidays (1st and 3rd January 2011).

NSW has declared Tuesday 28th an additional holiday, retained Christmas Day on 25th December and substituted Boxing Day to 27th December. It also will be celebrating two New Years Day holidays on 1st and 3rd January 2011.

In Queensland there are two Christmas Day holidays (25th and 28th) and two New Years Day holidays (1st and 3rd January 2011). Boxing Day is substituted to Monday 27th December.

Tasmania will observe Christmas Day on Saturday the 25th and Monday the 27th December. Boxing Day has been substituted to the 28th December. New Years Day has been substituted to Monday 3rd January 2011.

In South Australia every Sunday is a public holiday so this year Boxing Day is observed on the Sunday and Tuesday 28th December. Christmas Day is observed on Monday 27th December. New Years Day is substituted to Monday 3rd January 2011.

In West Australia the Christmas, Boxing and New Years Day is observed on the actual date unless the relevant award or enterprise agreement substitutes it to the following Monday or Tuesday.

[Contact us](#) if you are unsure of the holidays that apply to your business.

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