

## WAGE FREEZE – MINIMUM PAYRATES HELD AT 2008 LEVEL FOR SIX MONTHS

**In its final general wage setting decision, the Australian Fair Pay Commission has decided to maintain the Federal Minimum Wage at \$14.31 per hour (\$543.78 per week) and hold Australian Pay and Classification Scales to their current levels. This decision effectively freezes the minimum wages required to be paid to Australian employees at least until 1 January 2010.**

The decision applies to adults, junior employees, employees to whom training arrangements apply, casual employees and employees receiving basic piece rates of pay. Employees with a disability working under the Supported Wage System will receive an increase to the minimum weekly rate of pay. The rate increases from \$69 to \$71 on the first pay period on or after 1 August 2009.

Professor Ian Harper, Chairman of the Fair Pay Commission has made it clear that the decision was intended to protect jobs and to support a stronger recovery in employment as the economy picks up. Professor Harper believed that in the current environment, there was a heightened risk that an increase in minimum wages would reduce employment and working hours.

*"This is not the time to risk the jobs of low paid Australians by increasing minimum wages."*

The Commission noted that consumer prices would continue to increase, putting some pressure on household disposable income but the Australian Government's changes to the tax/transfer system and its recent fiscal stimulus packages had provided real increases to disposable income for most households maintaining the safety net.

In reading the decision, it is clear that the Commission has relied (at least partly) on research showing that the burden of higher unemployment falls disproportionately on low-paid, low-skilled workers during economic downturns. In particular, the research indicates that it also falls on those attempting to gain a foothold in the labour market.

The Commission believes the decision not to vary minimum wages at this time will help minimise the effect of the downturn on employment and

particularly its impact on the most vulnerable workers.

I encourage you to read this [final decision](#) of the Commission as it provides one of the few examples in the history of Australian wage setting that is truly evidenced based. The use of economic research has been a welcome characteristic of the Commission's wage setting function during the course of its short life.

Commencing from 1 January 2010 we can expect the old style 'deal making' method of wage determination to reassert itself within Australian employment and wage regulation.

If you have any questions on the application of the decision to your business please [contact us](#).

## Award modernisation stage 3 IT and telecommunications professionals industry award

An 'Exposure draft' of the proposed [Professional Employees Award 2010](#) is available for viewing on the Australian Industrial Relations Commission award modernisation site. Employers operating in the IT and telecommunications industry should consider the implications for their own businesses, particularly the minimum wages which, include a starting rate of \$38,273 per year for graduate engineers, scientists and IT professionals.

The final version of the modern award will be published on 4 September this year. Once it is published clients that may be affected by the modern award should contact [Maguire Consulting](#) to discuss the impact and plan for the implementation.

The modern award will commence operation on 1 January 2010. [\[More\]](#)

## Award modernisation stage 4 consultation

The Australian Industrial Relations Commission has commenced its consultation on stage 4 award modernisation. This is the final stage for the enormous task of simplifying and reducing the content and the number of awards into a truly national system of industry awards.

There are thirty industry groupings of awards in this final stage, including the social and community services sector, employment services and anyone else that is not covered by a specific modern award. Some of the industry groups are defined by their inability to be defined. For example, labour hire, accountancy and legal practices are defined within an industry entitled '*Industries not otherwise assigned*.'

The Commission will consider submissions from interested persons or organisations in developing the final set of modern awards. Public hearings are being held in Melbourne during the week of 3-7 August 2009. The Commission will publish for comment an 'Exposure draft' of each modern award it intends to make no later than 25 September and then will publish the final modern awards on 4 December. All modern awards will commence operation on 1 January 2010.

[\[More\]](#)

## New remuneration eligibility limits for unfair dismissal applications

New remuneration and compensation limits took effect for termination of employment applications from 1 July 2009. The following now apply:

- A high income threshold remuneration limit (indexed from \$106,400)—from 1 July 2009, an employee not employed under award conditions whose remuneration exceeds \$108,300 per year is excluded from making application.
- Compensation limit (indexed from \$53,200)—from 1 July 2009, the limit of compensation that may be awarded in lieu of reinstatement in unfair dismissal applications made under the Fair Work Act 2009 is \$54,150. For applications made under the Workplace Relations Act 1996—from 1 July 2009 is \$55,700.
- Application fee—from 1 July 2009, the new application fee for termination of employment applications is \$59.50.

[\[More\]](#)

## Fair work compliance campaigns

The Fair Work Ombudsman (the successor to the Workplace Ombudsman) conducts campaigns to ensure compliance with award conditions and pay scales targeted at specific industries. In September 2009 the Fair Work Ombudsman will be targeting

security industry employers. From March 2006 to June 2009, the Workplace Ombudsman investigated 15 workplace relations matters in the security industry. It found 178 employees were underpaid a total of \$308,077.33. Eight cases went to court, incurring a total of \$25,500 in penalties.

The [Fair Work Ombudsman](#) also targets employers within States and local areas.

## TIP OF THE MONTH: Understanding the 'Fair dismissal system'

### Introduction

A new, '*Fair dismissal system*' has been introduced as part of the new workplace relations system under the Fair Work Act from 1 July 2009. As expected the proposed changes open up the fair dismissal system to employees of all employers, although an employer of less than fifteen people will be classified as a small business and required to comply with a different set of rules – the Small Business Fair Dismissal Code. This article describes the key elements of the new fair dismissal system.

### Who is protected from unfair dismissal?

A person is protected from unfair dismissal if at the time they are dismissed the person is an employee who has completed a period of employment with his or her employer of at least the minimum employment period and one or more of the following apply:

1. A modern award covers the person;
2. An enterprise agreement applies to the person in relation to the employment;
3. The sum of the person's annual rate of earnings and such other amounts (if any) worked out in relation to the person in accordance with the regulations, is less than the high income threshold.

The minimum employment period is:

1. 6 months continuous service (excluding small businesses) ending at the earlier of the following times:
  - a. the time when the person is given notice of the dismissal; or
  - b. immediately before the dismissal
2. One year of continuous service if the employer is a small business employer.

The high income threshold is determined under a convoluted formula prescribed in the Fair Work Regulations 2009. The high income threshold from 1 July 2009 is \$108,300 per year.

## Who is not protected by the fair dismissal system?

- Employees who have not met the minimum employment period are not eligible to make a claim for unfair dismissal.
- An employee transferring to an employer under a transfer of business (not between related entities) who has been informed by the new employer in writing that their prior service will not be recognised must serve the minimum employment period with the new employer to be eligible to make a claim for unfair dismissal.
- Casual employees employed on an irregular basis are not eligible to make a claim for unfair dismissal. Only those casual employees who have been engaged on a regular and systematic basis and who have a reasonable expectation that their employment would continue, can make an unfair dismissal claim.

## When has a person been dismissed?

A person has been dismissed if the person's employment with his or her employer has been terminated on the employer's initiative or the person has resigned from his or her employment, but was forced to do so because of conduct, or a course of conduct, engaged in by his or her employer i.e. they had been constructively dismissed.

A person will not be dismissed when:

- The person was employed under a contract of employment for a specified period of time, for a specified task, or for the duration of a specified season, and the employment has terminated at the end of the period, on completion of the task, or at the end of the season.
- The person was an employee to whom a training arrangement applied; and whose employment was for a specified period of time or was, for any reason, limited to the duration of the training arrangement; and the employment has terminated at the end of the training arrangement;
- The person was demoted in employment but the demotion does not involve a significant reduction in his or her remuneration or duties; and he or

she remains employed with the employer that effected the demotion.

## Grounds for a claim of unfair dismissal

An employee will have been unfairly dismissed if Fair Work Australia (the successor of the Australian Industrial Relations Commission) is satisfied that the:

- A. Person has been dismissed; and
- B. Dismissal was harsh, unjust or unreasonable; and
- C. Dismissal was not consistent with the small business fair dismissal code; and
- D. Dismissal was not a case of genuine redundancy.

## Meaning of genuine redundancy

A person's dismissal will have been a case of genuine redundancy if the:

1. Person's employer no longer required the person's job to be performed by anyone because of changes in the operational requirements of the employer's enterprise; and
2. Employer has complied with any obligation in a modern award or enterprise agreement that applied to the employment to consult about the redundancy.

A person's dismissal will not be a case of genuine redundancy if it would have been reasonable in all the circumstances for the person to be redeployed within the employer's enterprise or enterprise of an associated entity of the employer.

## How will Fair Work Australia decide harsh, unjust or unreasonable?

The consideration of whether or not a dismissal has been harsh, unjust or unreasonable will largely be limited to:

- The validity of the reason for dismissal based on the conduct or capacity of the person;
- Whether the person was notified of the reason for dismissal;
- Whether the person was warned about the performance or conduct;
- The opportunity to respond to the allegations of unsatisfactory performance or conduct;

- The impact of the size of the employer's business and their access to expertise in human resource management; and
- The access to and participation of a support person or representative for the dismissed employee;
- Any other matter that Fair Work Australia considers relevant.

Genuine operational reasons for a dismissal are no longer acceptable grounds to defend an application of unfair dismissal. However, genuine redundancy will not be considered unfair dismissal.

## Small Business Fair Dismissal Code

The Minister for Workplace Relations may declare a [Small Business Fair Dismissal Code](#).

In deciding whether a person has been unfairly dismissed, from a small business Fair Work Australia must decide whether the dismissal was consistent with the code. According to the Fair Work Act a person's dismissal is considered consistent with the Small Business Fair Dismissal Code if:

- Immediately before the time of the dismissal or at the time the person was given notice of the dismissal (whichever happened first), the person's employer was a small business employer; and
- The employer complied with the Small Business Fair Dismissal Code in relation to the dismissal.

## What is a small business?

Until 1 January 2011 a small business is a business that employs fewer than 15 full-time equivalent employees. From 1 January 2011, the code will apply to small businesses with fewer than 15 employees based on a simple headcount (rather than full-time equivalent).

In the circumstance of an underperforming-employee, the Code requires the employer to give the employee:

1. A valid reason, based on the employee's conduct or capacity to do the job,
2. A warning that the employee is at risk of being dismissed and
3. A reasonable chance to rectify the problem.

Multiple warnings are not required. It is desirable, but not necessary, for a warning to be in writing.

The Code also prescribes the circumstances in which a summary dismissal (a dismissal without notice or warning) is warranted, including cases of theft, fraud and violence.

## Fair Work Australia procedure

Unfair dismissal claims must be lodged with Fair Work Australia within 14 days of the date of effect of the dismissal.

Fair Work Australia will take a flexible approach in gathering information. It will be able to make initial inquiries and discuss the issues with employers and employees, including in informal conferences at mutually agreed locations, with a view to achieving a mediated resolution.

It may decide the following matters prior to deciding the merit of the application:

- Whether the application was made within the 14 days;
- Whether the person was protected from unfair dismissal;
- Whether the dismissal was consistent with the Small Business Fair Dismissal Code;
- Whether the dismissal was a case of genuine redundancy.

However, where there are contested facts i.e. the parties do not agree on circumstances leading to the dismissal, Fair Work Australia must decide the outcome in either a conference or by holding a formal hearing.

Fair Work Australia is required to act consistently with the principles of natural justice, including by ensuring that both parties get to have their say and are able to respond to allegations put against them.

Public hearings will only occur where, after considering the views of the parties, Fair Work Australia decides this would be the most effective and efficient way to resolve the matter.

## Remedies

Reinstatement is the primary remedy unless Fair Work Australia believes that reinstatement is not appropriate. In such circumstances Fair Work Australia may award compensation in lieu of reinstatement.

In deciding compensation the following must be taken into account:

- The effect of the order on the viability of the employer's enterprise; and

- ii. The length of the person's service with the employer; and
- iii. The remuneration that the person would have received, or would have been likely to receive, if the person had not been dismissed; and
- iv. The efforts of the person (if any) to mitigate the loss suffered by the person because of the dismissal; and
- v. The amount of any remuneration earned by the person from employment or other work during the period between the dismissal and the making of the order for compensation; and
- vi. The amount of any income reasonably likely to be so earned by the person during the period between the making of the order for compensation and the actual compensation; and
- vii. Any other matter that Fair Work Australia considers relevant.

If Fair Work Australia is satisfied that misconduct of a person contributed to the employer's decision to dismiss the person, Fair Work Australia must reduce the amount it would otherwise order by an appropriate amount on account of the misconduct.

The maximum compensation is twenty-six weeks' pay.

## Representation

Employers and employees may only be represented by lawyers or paid agents if permitted by Fair Work Australia. Fair Work Australia may grant permission for a person to be represented by a lawyer or paid agent in a matter before Fair Work Australia only if it would:

1. Enable the matter to be dealt with more efficiently, taking into account the complexity of the matter; or
2. Be unfair not to allow the person to be represented because the person is unable to represent himself, herself or itself effectively; or
3. Be unfair not to allow the person to be represented taking into account fairness between the person and other persons in the same matter.

## Appeals

An employer or dismissed employee may appeal a decision of Fair Work Australia on the grounds that

there had been a serious error of fact and it is in the public interest for the appeal to proceed.

Further information and resources on the new system are available to subscribers to [Employee relations online for Employment services](#). Clients of Maguire Consulting may also access information by contacting [Paul Maguire](#).

## AROUND THE STATES - What's making news in state jurisdictions?

### New South Wales

#### Review of Entertainment Industry Act

The NSW Government regulates entertainment industry agents, managers and venue consultants (booking agents) through the Entertainment Industry Act 1989. These people must comply with a range of rules about how much they can charge, how they handle money on your behalf and what information they must disclose to you.

The Government is reviewing the regulation to make sure it is protecting performers.

[\[More\]](#)

### Victoria

#### Victoria's Small Business Festival August 2009

There will be over 400 events throughout Victoria from 1-31 August. These events include small business seminars, workshops, conferences, launches, forums and exhibitions. Learn how to best manage your small business in difficult times, gain insights from business leaders, build your business networks and exchange new ideas.

[\[More\]](#)

### Queensland

#### New department for employee relations

Services for employee relations now reside with the Department of Justice and Attorney-General (JAG). Post-election changes have added responsibilities of industrial relations, electrical safety and workplace health and safety to JAG.

[\[More\]](#)

## State wage case 2009

The Queensland state wage case is underway. On 10 June 2009 and 16 June 2009 respectively, the Queensland Council of Unions (application B/2009/41) and The Australian Workers' Union of Employees, Queensland filed with the Industrial Registrar applications seeking increases to the rates of all Queensland awards.

[\[More\]](#)

## Western Australia

### State wage decision 2009

On Thursday 11 June 2009 the Western Australian Industrial Relations Commission handed down the 2009 State Wage decision, ordering a \$12.30 per week increase to the State minimum wage and adult award rates of pay. This will increase the State minimum wage to \$569.70 per week effective on and from the commencement of the first pay period on or after 1 October 2009.

[\[More\]](#)

## Tasmania

### State wage decision 2009

The weekly rates of pay in all public and private sector awards will be increased by \$12.00 from 1 August 2009.

All work related allowances will be increased by 1.9%. Meal allowances in the relevant awards will be increased to \$15.40 per meal. The minimum wage for Tasmania will be \$558.10 per week. The minimum amount payable under the Supported Wage System shall increase to \$71 per week

The increases provided by this decision will take effect from the first pay period on or after 1 August 2008.

[\[More\]](#)

## South Australia

### Deadline nears for 2009 Safe Work awards

Nominations close at the end of this week for South Australia's 2009 Safe Work Awards. The annual awards highlight best practice health and safety in the state's workplaces.

[\[More\]](#)

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