

## \$21.70 a week increase awarded for transitional and pre-reform federal awards

**The Australian Industrial Relations Commission has decided to increase the minimum rates of pay for the remainder of federal award employees who are not employed by constitutional corporations.**

The weekly increase of \$21.70 per week to full time adult rates of pay is 4c more than the increase granted by the Fair Pay Commission in July but effectively translates into the same 57c increase to the minimum hourly rate of pay.

The increases will operate from the first pay period on or after 1 **October 2008**.

The two tier approach to wage regulation is due to transitional arrangement put in place under Work choices and will continue until the Australian Government fully introduces its changes to the law in 2010. Minimum wages of employees employed by unincorporated businesses and those not defined as trading or financial corporations are still prescribed in awards made by the Australian Industrial Relations Commission unless they are covered by State awards. The system is very confusing and therefore employers should seek advice if they are unsure of their specific obligations.

The increase to minimum rates will not affect employers and employees still operating under pre-27 March 2006 certified agreements or Australian workplace agreements...

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## Unfair dismissal - new remuneration and compensation limits

On 1 July 2008 new remuneration and compensation limits took effect for unfair and some unlawful dismissal applications under the Workplace Relations Act 1996. There was also an increase in the lodgement fee for dismissal applications.

- **Remuneration limit** - From 1 July 2008, an employee not employed under award conditions whose remuneration exceeds

\$106,400 (indexed from \$101,300) per year is excluded from making application.

- **Compensation limit** - From 1 July 2008, the limit of compensation that may be awarded by the Commission in lieu of reinstatement to an employee not employed under award conditions is \$53,200 (indexed from \$50,700).
- **Lodgement fee** - From 1 July 2008, the new lodgement fee for Termination of Employment applications will be \$57.30.

## Older workers are healthier, especially in capital cities: ABS

According a study by the Australian Bureau of Statistics older workers had lower rates of heart disease, diabetes, obesity and arthritis than their non working peers, according to a recent analysis of the 2004–05 National Health Survey by the Australian Bureau of Statistics (ABS).

The report found that mature age workers (between 45-74 years) were slightly healthier than their non-working counterparts, with 8 in 10 workers having a chronic health condition such as cardiovascular disease, diabetes or obesity, compared with 9 in 10 of the non-working population.

Cardiovascular disease and arthritis each affected around a quarter of all mature age workers compared with half of non-workers. However, similar proportions of workers and non-workers aged 45–74 years were overweight or obese (58% and 55% respectively).

On the other hand, 7% of mature age people reported that they had a condition (arthritis, osteoporosis, asthma, cancer, cardiovascular diseases, diabetes or mental problem) come about because of their work.

Work related conditions include a high proportion of disc disorders, (42%), back problems (41%) and hearing loss (32%).

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## Unemployment and employment increase in July

Employment across Australia increased by 10,900 to 10,721,500 in July 2008. Full-time employment increased by 53,700 to 7,718,400 and part-time employment decreased by 42,800 to 3,003,100.

Unemployment increased by 5,700 to 481,100. The number of persons looking for full-time work increased by 7,200 to 325,800 and the number of persons looking for part-time work decreased by 1,500 to 155,300. However, the unemployment rate remained steady at 4.3%. The male unemployment rate decreased by 0.1 percentage point to 3.9%, and the female unemployment rate increased by 0.2 percentage points to 4.8%.

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## TIP OF THE MONTH: Does the qualifying period of employment apply when the business is taken over?

**This question is often overlooked when a business merges with another business. However, the answer is important when the working relationship sours and the new employer dismisses a long serving employee from the merged business.**

The Australian Industrial Relations Commission addressed this question in a recent case on appeal - Aged Care Services Australia Group Pty Ltd [2008] AIRCFB 367 [PR981582].

### The Background

The Full Bench of the Commission heard an appeal from an employer that dismissed several employees after it took over an aged care business. The employer claimed that the Commission did not have jurisdiction to hear the claims of unfair dismissal as the employees were dismissed whilst serving the six months qualifying period under section 643(6) of the Workplace Relations Act 1996.

The Full Bench of the Commission upheld the appeal.

### The Commission's reasons

Sections 643(6) and (7) of the Act state:

*"(6) An application under subsection (1) must not be made on the ground referred to in paragraph (1)(a), or on grounds that include that ground, unless the employee concerned had completed the qualifying*

*period of employment with the employer at the earlier of the following times:*

*(a) the time when the employer gave the employee the notice of termination;*

*(b) the time when the employer terminated the employee's employment.*

*(7) For the purposes of subsection (6), the qualifying period of employment is:*

*(a) 6 months; or*

*(b) a shorter period, or no period, determined by written agreement between the employee and employer before the commencement of the employment; or*

*(c) a longer period determined by written agreement between the employee and employer before the commencement of the employment, being a reasonable period having regard to the nature and circumstances of the employment."*

The Commission found that the transmission of business rules in the Workplace Relations Act that allow for the protection of particular award and agreement conditions on transfer have no impact on the operation of ss.643(6) and (7) of the Act. The dismissed employees had argued that the qualifying period didn't apply because the employer had recognised their prior service when they employed them. The Commission's view was:

*" ... So, while the transmission of business rules provide some protection to affected employees on the transmission of a business, the protection in Part 11 of the Act does not extend to protecting such employees from the operation of ss.643(6) and (7)."*

It pointed out that *"s.643(7) of the Act provides for the removal of the harshness of s.643(6) for an employee affected by a transmission of business who has served a qualifying period of employment with their old employer. Under s.643(7), by written agreement before the commencement of the employment, the employee and the new employer can determine that there be no qualifying period of employment with the new employer for the purposes of s.643(6) of the Act.*

It further noted *"Although we appreciate that not all employees will be in a position to secure such a written agreement, just as not all employers will be in a position to resist such a written agreement."*

### Conclusion

Employees transferring from a business to a new employer have a choice. The new employer and the employees can agree to waive or reduce the qualifying period of employment prescribed under the Workplace Relations Act. If they don't agree or

don't address the question then the qualifying period will apply.

The issue for the new employer is an important one. Should they take the opportunity to have a good look at the performance of the transferring employees without the risk of an unfair dismissal claim in the first six months or accept the risk if the employment relationship is unsuccessful?

The answer is obvious. – apply a clear probationary period of employment for employees transferring to their employment. Do not, unless there is a compelling reason otherwise, waive the qualifying period.

The decision may seem harsh, but there are many circumstances where problems develop through the merging of two entities into one including the merging employment relationships. For example, the culture of the business that has been taken over will in most circumstances be different to the employer. Some of the transferring employees will adapt to the new culture but many will not. The performance expectations may also be quite different. In those circumstances the success of the business may be threatened by the continuation of those employment relationships. A failing business that has been acquired by another successful business has to be placed on sounder footing and that includes the attitude, direction and culture of the employees.

### **What should employers do?**

Two actions are critically important. Include a probationary period of up to six months in the letter of offer of employment to transferring employees. this makes it clear that the employment is not secure and that there will be a review to confirm ongoing employment. the second action is to follow through with a structured induction and review program. If you believe that your workplace culture and performance is a key to success then take the time to make sure the transferring employees adopt your culture and performance standards. Failure to do so may cost your balance sheet.

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

### **New South Wales**

#### **NSW IRC Fee increases**

From 1 August 2008 fees charged in the Industrial Relations Commission will increase.

The Industrial Registrar will continue to exercise the discretionary power to waive fees in cases of financial hardship.

Certain fees do not apply to industrial organisations, government departments or statutory bodies (other than the WorkCover Authority).

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### **Victoria**

#### **Discrimination extended to include family responsibilities**

The Equal Opportunity Amendment (Family Responsibilities) Act 2008 (Act) takes effect in Victoria 1 September 2008. The amendment to the Act imposes new obligations on employers to accommodate 'family friendly' arrangements with their employees.

It has been unlawful for many years in Victoria for employers to discriminate against someone because they are a parent or carer. The Act expands the range of what constitutes discrimination against parents or carers in employment or employment-related areas under the Equal Opportunity Act 1995 (Vic).

It is now unlawful in Victoria for employers to unreasonably refuse to accommodate an employee's responsibilities as a parent or carer. Importantly, not every request for flexible work arrangements on the basis of parental or carer's responsibilities must be agreed to by employers. What constitutes 'unreasonably' refusing to accommodate responsibilities involves a balancing of all the relevant facts and circumstances including:

- the employee's circumstances, including his or her circumstances as a parent or carer;
- the nature of the employment role;
- the nature of arrangements required to accommodate the person's responsibilities as a parent or carer;
- the financial circumstances of the employer;
- the size and nature of the employer's business;
- the effect on the workplace of accommodating the person's responsibilities including the effect on co-workers and the employer's business activities; and
- the consequences for the employee and the employer of making or not making the accommodation.

No definition is provided in the Act as to what are the 'responsibilities' of a parent or carer, however this term is likely to be interpreted broadly.

- Requests for accommodation of responsibilities may include a request to:
- work part-time;
- job share;
- adjust start and finishing times;
- work increased hours over less days; and
- work from home.

Note that this new law applies to all employers in Victoria including those working under federal awards.

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## Queensland

### State Wage Case Decision

On 7 August 2008 the Queensland Industrial Relations Commission announced its 2008 State Wage Case decision.

- \$23.60 per week increase in award wage rates;
- \$23.60 increase in the level of the Queensland Minimum Wage, as it applies to all employees, bringing it to \$552.00;
- increase in existing award allowances which relate to work or conditions which have not changed, and service increments, by 3.8%; and

The operative date for the respective increases is 1 September 2008.

The increases do not apply to federal award employees.

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### Record keeping and payslip targeted education and compliance campaign begins

The Workplace Ombudsman has commenced a state based education and compliance campaign in Queensland targeting employers across various industries and focusing on the content and issue of payslips and record keeping.

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## South Australia

### State Wage Case Decision

The South Australian Industrial Relations Commission has determined that adult award rates of pay will be increased by \$24.50 per week, and the new State Minimum Award Wage will be \$546.65 per week.

The Minimum Standard for Remuneration (MSR) for a full time adult will also be established at \$546.65 per week. All awards and the MSR will be increased from a common operative date of the first pay period to commence on or after 1 October 2008. Proportionate adjustments will apply to juniors, trainees and other employees.

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## Western Australia

### WA Hairdressing and Beauty Industry Campaign

The Workplace Ombudsman is conducting a compliance campaign across the Hairdressing and Beauty industry in WA to ensure that businesses understand and are complying with Commonwealth workplace relations laws.

[\[More\]](#)

## Tasmania

### Expect an Inspector Campaign

The "Expect an Inspector" campaign is a 12 month campaign launched in July 2008. Workplace Standards Inspectors are conducting workplace inspections in the North West of Tasmania. Targeting all sectors of industry, the campaign is aimed at working together with industry to reduce the frequency and severity of workplace accidents.

[\[More\]](#)

## Further Advice

If you wish to discuss any of the articles in this edition of Employee Relations MONTHLY or need advice on any matter related to your employment relationships please contact Paul Maguire.