



# AFPC FACING KEY TEST ON MINIMUM WAGES

**T**he Australian Chamber of Commerce and Industry recently lodged a comprehensive submission with the Australian Fair Pay Commission for the 2007 Minimum Wage Review. Given that the 2006 decision took effect less than five months ago, as well as its size and breadth, ACCI is urging moderation in 2007.

## BACKGROUND

Australia has 105,000 regulated minimum wage pay scales. This is a major over-regulation requiring rationalisation and reform. Although many employers now pay wages based on workplace bargaining agreements (including collective bargaining and AWAs), about 1.7 million employees still have wages derived from these pay scales. Further, these pay scales tend to set the floor for enterprise bargaining.

With such an extensive network of regulation, the system for reviewing and varying minimum wages has important business impacts and economic consequences, especially in industries where a large percentage of minimum wage reliance still exists.

The Australian Fair Pay Commission (AFPC) was established in March 2006 as one of the primary reform pillars of the *WorkChoices* package. Following *WorkChoices*, the AFPC assumed the minimum wage setting role formerly undertaken by the Australian Industrial Relations Commission (AIRC) through national wage cases/safety net reviews.

There are some very deliberate differences between the AFPC and the AIRC processes, intended to generate a fresh approach to minimum wage setting in Australia. These include the AFPC setting minimum wages through an inquiry rather than a court case, scope for independent research commissioned by the AFPC and an emphasis on non-adversarial wage setting.

The AFPC commenced its work in the first half of 2006, with the appointment of the AFPC Chair and four other part time commissioners, and the staffing of an independent AFPC secretariat.

It commenced its initial review in May 2007, taking submissions from a wide range of employer, employee,

government and community organisations.

## THE 2006 AFPC DECISION

The AFPC announced its inaugural minimum wage decision and increase on 26 October 2006, to take effect from 1 December 2006. This month long notice period was an improvement on the preceding practice of the AIRC, which consistently applied significant wage increases with effectively no notice to employers. This created complicated back pay and retrospectivity, year in and year out prior to 2006.

Less welcome was the AFPC's 2006 approach to the level of minimum wages, and its failure to issue legally authoritative pay scales. Its increases of \$27.36 and \$22.04 per week were amongst Australia's largest ever single increases in minimum wages and were higher than the excessive minimum wage increases awarded year in and year out by the AIRC across the preceding decade.

At the time of the initial AFPC decision, ACCI described it as a bad start to the new system, and as "*disappointing and excessive*." The increase was well in excess of the underlying rate of inflation and appeared to pay undue and uncritical regard to shorter run inflationary fluctuations during 2006.

The 2006 decision also increased wages well beyond any realistic concept of a safety net. It increased all 105,000 minimum wages inherited from the bloated award system and was not limited to those on lower wages. It increased Australia's highest minimum wages by \$22 per week, including those rates already in excess of \$1000 per week and those in excess of average earnings. This was scarcely consistent with the safety net role minimum wages are to play under Australia's reformed workplace relations system.

To the extent the magnitude of the 2006 rise was based

on the transition from the old system to the new system and the fact that 18 months passed between the last AIRC decision and the first AFPC decision (rather than the usual 12 months), the AFPC made a fundamental error. A high wage rise payable in perpetuity cannot be explained as a transition for what if anything was a four and a half month delay when compared with the old system.

It also failed to properly apply its discretion in making transitional arrangements from the old to the new system. It applied the 2006 minimum wage increases to wage rates that were already subject to agreed future increases determined under the pre-AFPC system but which take effect at intervals during the early years of the new AFPC system.

Unless transitional arrangements are put in place, then employers caught in this overlap from the old to the new will be unfairly treated by having to pay minimum wage increases twice over the same period.

Employers were entitled to feel disappointed and concerned at the magnitude of the 2006 increase. They will be forced to pay this large increase on an enduring basis without any accompanying requirements for increases in productivity.

ACCI calculates the cost to employers at around \$2 billion per year.

ACCI noted at the time the 2006 decision was announced that a wage increase of the size granted in 2006 had considerable potential to be economically damaging. The decision did nothing to assist jobs growth or the employment prospects of those out of work.

## 2007 AFPC REVIEW: ACCI POSITION

The AFPC has now commenced its second minimum wage review.

ACCI lodged its second major AFPC submission on 30 March 2007. The submission comprised over 300 pages of detailed economic and workplace relations analysis, argument and advocacy in support of the position agreed by the ACCI General Council in March 2007.

In essence the ACCI position is that:

### *Timing*

As a general principle, no minimum wage playing a genuine safety net role in a bargaining based system should be increased more frequently than once in any 12 month period, with no presumption that minimum wages must increase every 12 months.

### *Proximity*

In the current circumstances, no increase arising from this AFPC review should come into effect less than 12 months from the commencement of the 2006 AFPC increase. This means any 2007 increase should not take effect prior to 1 December 2007.

### *Moderate Increase*

If the second AFPC review does generate a minimum wage increase, it should be of a genuinely moderate nature only. The full ACCI submission extensively examines the concept of moderation and what this means for the outcome of the AFPC review. Considerations include:

- the size and impact of the 2006 increase and the short period since it took effect;
- the impossibility of properly understanding the impact of last year's wage increase such a short period from it taking effect (December 2006);
- better consideration of inflation and how the lower paid are to be defined;
- impacts on the economy and on employment of increasing minimum wages; and
- tax rate changes and social security support for the lower paid.

### *Price Changes*

If the AFPC is to base any increase, in whole or part, on movements in prices, this should reflect underlying and longer run price changes, rather than shorter run fluctuations in headline inflation which regularly abate within months. Headline inflation appears to have been a particularly inappropriate basis upon which to base minimum wage movements in 2006, as it was distorted by short run fluctuations in banana and oil prices.

### *Minimum Wage Only*

ACCI has proposed to both the AIRC and the AFPC, that any minimum wage increase should apply only to the federal minimum wage. Increases above this level should be determined by workplace bargaining.

### *Capping/Tiering*

If limiting minimum wage increases to the minimum wage only is not accepted, there should be a cap on any increases at the level of the tradespersons rate (\$15.94 per hour/\$605.70 per week). In the absence of capping, a tiered approach under which comparatively higher increases apply at the lower end of the pay scales is preferable to an approach in which all rates increase by the same amount.

### *Subsidiary Rates*

Established approaches should otherwise be maintained on the retention and adjustment of casual, junior, training, disability and other concessional wage rates proportionate to any prevailing increase.

### *Proper Notice*

Any changes to minimum wages should not come into effect until a proper period of notice after their announcement. This should be a period of preferably six, but certainly no less than three, months from an announcement or formal decision that minimum wages are to be increased.

### *First Pay Period Rather Than Single Date Implementation*

Any increase in minimum wages arising from the 2007 AFPC review should be applied on a first full pay period commencing on or after basis, rather than a stand-alone date basis (the approach in 2006).

### *Publish Pay Scales*

Any AFPC decision to increase minimum wages should be accompanied by the publication of revised pay scales (finalised after consultation with industrial organisations).

Submissions are now closed and the AFPC is considering the views of ACCI and other organisations and individuals. This includes ACCI members, other employer organisations, individual employers, unions, governments and various community organisations. The AFPC has indicated to date that its second minimum wage decision will be announced in "mid-2007".

## **ACCI SUBMISSION: KEY THEMES**

The second AFPC review also provides an opportunity for ACCI to pursue the case for reform of approaches to minimum wage setting and to respond to the thinking of other organisations including the ACTU, governments and community organisations. The ACCI submission does this in some detail across a set of key areas. A number of key themes are identified:

### *Aspects of the 2006 Decision Were a Step in Right Direction*

The initial AFPC decision did reflect some gains and revisions of approach from the former process. There are some positive signals in the analysis and conclusions of the 2006 AFPC decision.

### *Safety Net Still a Distant Aspiration*

Notwithstanding the previous point, Australia continues to have minimum wages which are yet to realise their role as a genuine safety net. Australia continues to have the highest or amongst the highest minimum wages in the world, and certainly the most pervasive minimum

wage system in the world. This continues to have a real detrimental impact on the economic, employment and efficiency considerations the AFPC must advance under the *Workplace Relations Act 1996*.

### *Need to Better Link Dollars to Conclusions*

There remains scope to better link the AFPC's analytical conclusions and the overall dollar increases to minimum wages it hands down. Sound conclusions and analysis last year were not matched in the overall approach to increasing minimum wages, nor in the inflated \$27 and \$22 increases awarded. More needs to be done to ensure the AFPC's improved analysis and conclusions actually translate into the level of minimum wage increase they genuinely merit.

### *Still Early Days*

The AFPC made an initial 2006 decision with which ACCI disagreed, but in fairness it did so in a very early review, with truncated timeframes, in a climate in which everyone was working with new legislation. Importantly however, the 2006 approach does not bind the AFPC to particular conclusions and approaches in the longer term. There is ongoing scope to revisit and vary the approaches in the 2006 decision.

### *Not Wedded to 2006 Approach*

The AFPC is not bound by precedent. It is quite open to the AFPC to change its approaches and ACCI identifies throughout its 2007 submission a number of areas where this should occur. This doesn't mean the AFPC should act inconsistently, but in its earliest periods of operation it has an opportunity to take feedback and refine its approaches.

### *Legislative Reforms Have More Work to Do*

There remains considerable scope for the amended legislation governing minimum wage setting to change outcomes and processes. The AFPC retains considerable scope to deliver on the opportunities for better minimum wage setting the reformed wage setting system offers.

### *Still an Opportunity to Improve on AIRC*

There remains considerable scope for the AFPC to realise its intended potential and to do better than the preceding AIRC in key areas. The AFPC has a range of options open to it to improve minimum wage fixing in Australia.

### *The AFPC should be a Critical Consumer of Australia's Minimum Wage Legacy*

Not everything inherited from the former AIRC process should be dismissed by the AFPC. Rather, the AFPC needs to become a critical consumer of its inheritance, maintaining that which works and contributes to its revised role, and moving away from those approaches

which do not stand up to independent analysis under the current Act.

#### *Must be 12 Months Between Increases*

One of the sound inheritances from the pre-*WorkChoices* system is that 12 months needs to elapse between minimum wage increases. One of the key themes explored throughout ACCI's 2007 AFPC submission is the imperative for not less than 12 months to elapse between wage increases and for any increase to not take effect prior to 1 December 2007 at the earliest.

#### *Information Deficit - Too Early to Know Impact of 2006 Approach*

It is too early to know the impact of the December 2006 decision on the range of considerations the AFPC must have regard to. It is not yet possible to have sufficient data to address issues raised by the AFPC in convening its second review, or to know the actual impact of what the AFPC did in 2006. This further favours not increasing minimum wages prior to 12 months elapsing from the preceding 2006 increase.

#### *Considerations Support Caution/Moderation*

Having regard to the full range of factors in the legislation, those the AFPC identified in its 2006 decision, and those raised throughout ACCI's 2007 submission, the AFPC should act cautiously and moderately in 2007. Due caution and moderation demands a more restrained level of increase than that of 2006, and greater moderation and caution in uprating minimum wages generally.

#### *Better Encourage Bargaining*

More attention needs to be paid to encouraging more Australians off awards/pay-scales onto rates of pay under agreements. There remains a persistent cohort of employees locked out of bargaining. Inflated and unduly pervasive minimum wage increases do nothing to assist these outsiders into bargaining.

#### *Avoid an Unduly Macro Focus*

The AFPC needs to carefully consider the impact of wage increases on the workplaces which actually pay minimum wages. There is no basis for a solely macroeconomic focus or for diluting the actual impact of wage increases by focusing purely on macroeconomic indicators to the exclusion of feedback from, for example, the industry and small business level.

#### *Doing Better by the AFPC's Stakeholders*

There is substantial scope for the AFPC to do better for its employer and employee stakeholders in the implementation of its minimum wage decisions. Users of minimum wages continue to require greater notice of pending wage increases and the publication of the detailed

new minimum wage obligations in pay scales after any headline uprating of minimum wages.

#### *Critical Consumption of Wider Set of Views*

Whilst ACCI supports the AFPC encouraging greater openness and taking submissions from a wider range of interests, this then requires greater discrimination in the treatment of the views it hears. As the AFPC opens Australian minimum wage setting to more voices, it will need to be able to better discriminate between them, and sort the wheat from the chaff. The starting point must be to respect and privilege the views of those representing actual employers and employees subject to these decisions, over less direct and more mediated views, progressively tenuous to the considerations at hand, or seeking to make an unduly narrow or partial contribution.

## CONCLUSION

The AFPC has an opportunity in 2007 to set Australian minimum wage setting on the right path. ACCI has critiqued the 2006 approach and identified key areas for improvement. Ultimately however the key tests will be greater moderation in the levels of increase awarded, the breadth of minimum wages to which they are applied, and the frequency of increases.

### Stop Press: ACCI Welcomes Pay Scale Publication Decision

On 23 April, ACCI welcomed the AFPC's announcement that it would commence a program of work to publish minimum wage pay scales in Australia.

Pay scales set out minimum wage obligations of employers. Employers need to know that pay scales are accurate and have legal authority. Publishing pay scales is not a reform to the wage system. But it is a necessary administrative task that must be undertaken if employers are to have confidence in the system and in the wages they must pay.

Employer bodies have many years of expertise in calculating and issuing minimum wage rates to employers. With publication by the AFPC of pay scales, this work will have the certainty that goes with the AFPC's legal authority. ACCI also welcomes the AFPC's intention to calculate and publish the scales after dialogue with employer bodies and industrial organisations.

The task is resource-intensive. This is because the AFPC inherited a massively overregulated minimum wage system, with up to 105,000 separate pay rates. Over time those pay scales need to be rationalised, with care to avoid unintended consequences. Publication of pay scales has the dual benefit of showing how overregulated the system is, and what the future rationalisation options may be.

This decision highlights the advocacy work of ACCI and employer organisations. On the Thursday prior to this announcement ACCI presented the case for pay scale publication to all five AFPC members, as part of our submission on minimum wages.

Further information on the AFPC review is available from:  
<http://www.fairpay.gov.au/fairpay/WageReviews2007/>.

The ACCI submission is available from:  
<http://www.acci.asn.au/SubmissionsFairPayCommission2007.htm>.