



Alert

EMPLOYMENT LAW

Minimum Wage Increase

Unlikely to Encourage SME's to Re-engage in Enterprise Bargaining

By Ben Duggan

Summary

The Fair Work Commission (FWC) in handing down its minimum wage review decision has provided the biggest wage increase in almost a decade.

A summary of the key wage increases that will apply from 1 July 2018 is as follows:

- the national minimum wage rate and modern award minimum wage will increase by 3.5%;
- the national minimum weekly wage will be \$719.20, an increase of \$24.30 per week; and
- the national minimum hourly rate will be \$18.93, an increase of 64 cents per hour.

We discuss some of the key aspects of the minimum wage review below.

The statutory framework of the Fair Work Commission's minimum wage review

A requirement of the *Fair Work Act 2009* (Cth) (FW Act) is that the FWC conducts a review of the national minimum wage and minimum wages in modern awards each financial year.

The FWC conducts its review within the statutory framework of the FW Act which includes consideration of the following:

- the objects of the FW Act (section 3);
- the modern award objective (section 134); and
- the minimum wages objective (section 284).

In the context of a review both the modern award objective and the minimum wage objective require the FWC to take into account a range of specific considerations including:

- Various economic considerations.
- Relative living standards and the needs of the low paid.
- Promoting social inclusion through increased workforce participation.

In particular, one of the considerations of the modern award objective is 'the need to encourage collective bargaining' (section 134(1)(b) of the FW Act).

In the absence of any of primacy or weighting being attributed to these three objectives the FWC's task is an evaluative task.

In its 2014-15 minimum wage review decision, the FWC summarised the practical application of its task in the following manner:

*"In taking into account available economic and social data, the [FWC's] approach is broadly to assess the changes in this data from year to year and determine how they inform the statutory criteria. Put another way, and consistent with the ACCI's submission, if there were no change in the relevant considerations from one year to the next then, all other things being equal, a similar outcome would result."*¹

Importantly, the FW Act also establishes procedural fairness requirements for the minimum wage review that ensure that all interested parties are provided

¹ Paragraph 57 of the Annual Wage Review 2017-2018 decision (G2018/1).

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with a reasonable opportunity to contribute by making submissions to the review.

The submissions as to the proposed minimum wage adjustment that should be made by the Fair Work Commission's minimum wage review

A number of parties, including locally based employer chambers, lodged submissions with the FWC containing proposals in response to the minimum wage review.

The submissions from the Federal Government and the South Australian Government did not propose a particular level of increase in the national minimum wage or the modern award minimum wage.

A number of submissions proposed an increase to the national minimum wage and the modern award minimum wage.

The submissions from parties proposing an increase contained various methods as to the manner of the increase ranging from tiered, flat dollar, or percentage increases.

The ACTU's submission proposed an increase of 7.2% to both the national minimum wage and the modern award minimum wage.

In the Australian Chamber of Commerce and Industry (ACCI) submission it proposed a straight percentage increase of no more than 1.9%.

In its submission the Ai Group suggested, by reference to the modern award objective to 'encourage enterprise bargaining', that it was important that the level of the increase in minimum wages awarded does not limit the scope or motivation for bargaining over wages at the enterprise level stating that:

"It is Ai Group's experience that the level of the minimum wage increase granted in the Annual Wage Review is a factor considered by employers and employees when deciding whether to pursue the making of an enterprise agreement; the higher the minimum wage increase granted by the (FWC), the less likely an employer and its employees will seek an enterprise agreement."²

The Ai Group argued for this reason that the level of any minimum wage increase should generally be set at a level that is lower than average annualised wage increases in enterprise agreements, which supported its proposal on this occasion to limit the increase to 1.8%.³

² Ai Group submission, 13 March 2018.

³ the average enterprise bargaining increase was 2.2%.

A table was produced by the FWC in its minimum wage review decision⁴ of the wage adjustments proposed by the various parties who made submissions (refer table 1).

Enterprise bargaining

The Ai Group proposal that the level of any minimum wage increase should generally be set at a level that is lower than average annualised wage increases in enterprise agreements to achieve the modern award objective of 'encouraging enterprise bargaining' was rejected by the FWC in its consideration of this matter, which is part of the modern award objective.

The FWC in doing so acknowledged that there has been a decline in enterprise agreement making which it attributed to a range of factors many of which were unrelated to increases in the national minimum wage and the modern award minimum wage.

As such the FWC was not persuaded that the gap between modern award minimum wages and bargained wages⁵ (to the extent it can be identified with any precision) has reached a level where it is 'encouraging or discouraging collective bargaining.'⁶

The experience of the Ai Group regarding the impact of higher minimum wage increases⁷ on the propensity to engage in enterprise bargaining is consistent with our experience, particularly among small and medium businesses, who are the very group that have opted out of bargaining under the FW Act.

An increase of 3.5% in minimum wages as a consequence of the 2017-2018 review combined with a similar increase last year will not,⁸ in our view, 'encourage' employers and their employees to engage in enterprise bargaining.

In our view the increase to minimum wages⁹ will in the absence of a concerted effort to 'encourage' bargaining, such as the introduction of simplified bargaining rules for small and medium business, fail to arrest the continued decline in the number of enterprise agreements.

Conclusion

The FWC were greatly influenced by the positive prevailing economic conditions.

⁴ Appendix 2 of the Annual Wage Review 2017-2018 decision (C2018/1).
⁵ through enterprise agreements.

⁶ Summary of Annual Wage Review 2017-2018 [2019] FWCFB 3500.

⁷ which close the gap between minimum wages and bargained wages.

⁸ along with the others that discourage enterprise bargaining as identified by the FWC in its Review decision.

⁹ of 3.5% to be brought about by the 2017-2018 Review decision.

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In the decision the FWC made a series of observations about the key changes to the economy over the last 12 months which were as follows:

- full-time employment grew by 3.1%, significantly greater than the 1% growth over the previous year;
- hours worked increased by 3.3% over the year to April 2018, compared with 1.8% a year earlier;
- the age adjusted participation rate is at a record high at 66.7% in April 2018 and 0.8% higher than one year before;
- at 77.2% the employment to population ratio for persons aged 20-64 years reached a historic high in December 2017;
- strong contributions to gross domestic product growth from non-mining business investment and household consumption; and
- business conditions are generally robust.

To illustrate the point further the FWC made an observation about the contrast with the economic conditions that existed at the time of the 2016-2017 review commenting that:

“Compared to the position at the time of the 2016-2017 review the economic indicators now point more unequivocally to a healthy national economic and labour market. The recent data has shown strong growth in full-time employment together with a high participation rate.”

It was the FWC’s view that the current economic conditions meant that their proposed increase to the minimum wages of 3.5% was highly unlikely to have any negative impact, in particular, ‘upon employment.’

The FWC concluded that in the absence of any such negative economic impact of the proposed increase of 3.5% that it was clearly justified because it would lead to an improvement in the real wages and living standards¹⁰ of those reliant on such minimum wages.

¹⁰ absent any negative tax transfer effects.

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Table 1 - Proposed Minimum Wages Adjustments

Submission	Proposal		
	National minimum wage	Modern award minimum wages	Exemption/deferral sought
Australian Government	No quantum specified		
New South Wales Government	No quantum specified		
Queensland Government	\$27.10 pw	No quantum specified	
Victorian Government	\$27.10 pw	No quantum specified	
Government of South Australia	No quantum specified		
Western Australian Government	No quantum specified		
Federal opposition	No quantum specified, however proposes a real increase		
Australian Council of Trade Unions	7.2 per cent, applicable to all		
Australian Industry Group	1.8 per cent, applicable to all		
Australian Chamber of Commerce and Industry	Not exceed 1.9 per cent, applicable to all		
Australian Council of Social Service	No quantum specified		
Australian Catholic Council for Employment Relations	\$40.10 pw	C10 and below: \$32.00 pw Above C10: 3.9 per cent	
Australian Business Industrial and the New South Wales Business Chamber	Not more than 1.9 per cent		
Australian Federation of Employers and Industries	No more than 1.9 per cent, applicable to all		
Australian Hotels Association	Not more than 1.9 per cent, applicable to all		
Australian Retailers Association	1.9 per cent	No quantum specified	Requests increases to be considered on an award-by-award basis
Chamber of Commerce and Industry Queensland	Not more than 1.9 per cent	No quantum specified	Exemption for businesses subject to natural disasters
Chamber of Commerce and Industry of Western Australia	No quantum specified		
Housing Industry Association	No quantum specified		
Master Grocers of Australia	Not in excess of 1.1 per cent, applicable to all		
National Retail Association	No increase		
Restaurant & Catering Industrial	No increase		
South Australian Wine Industry Association Incorporated	A flat dollar increase no higher than inflation		
Lee, Walter	No quantum specified		

Table 1